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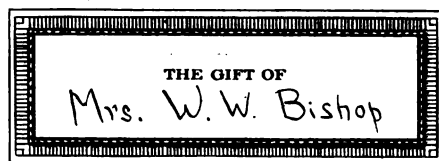
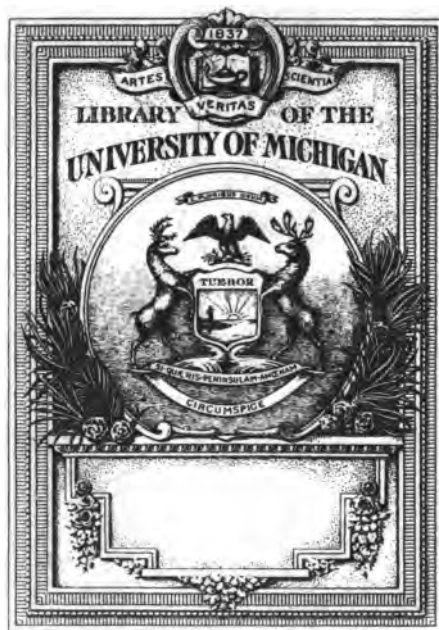
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# THE STAR *of* EMPIRE

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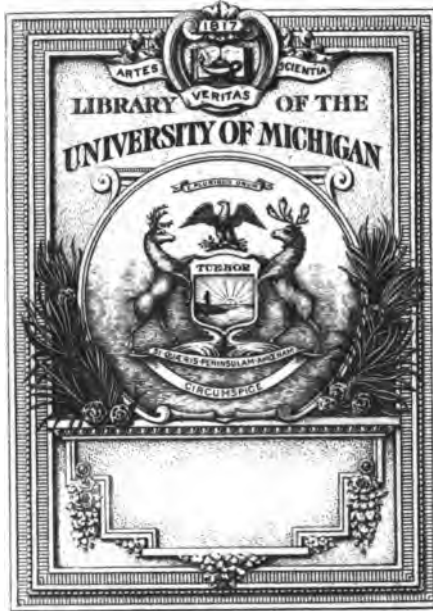
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*By* ARCHIBALD HENDERSON



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THE GIFT OF  
Mrs. W. W. Bishop

865



ISAAC SHELBY  
First Governor of Kentucky

*For George Lee Butler  
with compliments of Archibald Henderson*

# The Star of Empire

Phases of the  
Westward Movement in the  
old Southwest

*By*

ARCHIBALD HENDERSON, M.A., Ph.D., D.C.L.

Member of the American Historical Association, Mississippi Valley  
Historical Association, Ohio Valley Historical  
Association, etc., etc.



1919  
THE SEEMAN PRINTERY  
DURHAM, N. C.





*Gift  
Mrs. W. H. Bishop  
8-21-1929*

## INTRODUCTION

### NORTH CAROLINA AND KENTUCKY

In the epic movement of American expansion, which found its true inauguration in pioneer advance and its true romance in border struggle, North Carolina and Kentucky are united with indissoluble bonds. Three such men as Daniel Boone, Richard Henderson, and Isaac Shelby—Boone, the explorer and Indian fighter; Henderson, the colonizer and law-giver; Shelby, the soldier and statesman—flowering at a single historical moment out of the life of North Carolina endow her with a rare distinction as a creative force in westward expansion. Kentucky would be sorely impoverished, shorn of the greater measure of the incomparable romance and wonder of her settlement, rude beginnings, and first steps in national statehood if bereft of North Carolina's epochal contribution: the exploring instinct of Christopher Gist, the pioneering genius of Daniel Boone, the strenuous leadership of Isaac Shelby, the colonizing spirit of Richard Henderson, the expansionist ideals of the canny Scots, James Hogg and William Johnston; of that sire of the "Great Pacificator," Jesse Benton; of the Harts, Thomas, Nathaniel, and David; the Hendersons, Samuel, Nathaniel, and Pleasant; the Boones, Squire and Jesse; Richard Calloway, Felix Walker, John Luttrell, John Williams, John Gray Blount, Leonard Henley Bullock, William Bailey Smith, and others less spectacular in their achievements yet little less important. They were the crest and foremost fringe of that mobile wave which welled up from the fountain source of American liberty, the ancient colony of North Carolina, swept irresistibly through the "high-swung gateway" of the Cumberland, and held the fair region of the trans-Alleghany within the circle of its protecting barrier until Kentucky had weathered the storms of border warfare and been swept triumphantly into a union of free and independent states.

In writing the history of national development, it should continually be borne in mind that not one, but two movements

*W. H. B.*

were proceeding simultaneously along parallel lines. On the eastern slope, from the Alleghanies to the Atlantic, there was going forward the struggle of the Continental armies to exhaust and defeat the martial power of Great Britain. But simultaneously with this great dramatic conflict, of the more or less conventional military type, was occurring that guerrilla warfare and border struggle—with nature, with the wilderness, with a savage foe, with Great Britain—which was to eventuate, on the conclusion of the titanic struggle, in the addition of an imperial area of western territory to the domain of the Republic. If the sword and the musket were the symbols of the martial combat on the eastern slope, the symbols of pioneer struggle and advance in the western wilderness were the rifle and the tomahawk, the axe and the surveyor's chain.

In the present volume, the relations of North Carolina to Kentucky in the earlier phases of westward expansion in the Old Southwest will be set forth. This story will largely centre about the career of two great men—Isaac Shelby, surveyor, hero of three battles in three wars, and first executive of the commonwealth of Kentucky; and Richard Henderson, jurist, pioneer, expansionist, and president of the Colony of Transylvania. In making a study from this new angle, fresh light is thrown upon this little appreciated and imperfectly understood movement of westward expansion, which was ultimately to work such a profound and far-reaching effect upon the destiny of the nation.

# THE STAR OF EMPIRE

## PHASES OF THE WESTWARD MOVEMENT IN THE OLD SOUTHWEST

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### CHAPTER I

#### THE SOUTHWESTWARD MOVEMENT—THE SHELBYs

As late as the first quarter of the eighteenth century, the American settlements were largely confined to a narrow strip along the Atlantic coast, with occasional isolated settlements further in the interior. There were two main zones of settlement: the Tidewater section and the Piedmont region. Because of the great barrier of the mountain system, it was long before a way to the west was found.

Settlement progressed in two directions—westward from the coast, and southwestward, beginning in Maryland, New Jersey, and Pennsylvania, and extending along the broad terraces to the east of the Appalachian range. This second streaming of the population thrust into the Piedmont region a class of people differing in spirit and in tendency from their more aristocratic and complacent neighbors to the east. These settlers of the Valley of Virginia and the Carolina Piedmont were the first pioneers of the Old Southwest. In the second quarter of the century, in the Valley of Virginia free grants of a thousand acres per family were being made; and in the Piedmont region of North Carolina the proprietary of Lord Granville through his agents was disposing of lands, in six hundred and forty acre tracts, at trivial cost, and even making large free grants on the condition of seating a certain proportion of settlers. It was undoubtedly the rich lure of these cheap and even free lands in Virginia and North Carolina which set up the vast southwestwardly exodus in the second and third quarters of the century. "Inhabitants flock in here daily," wrote Governor Gabriel Johnston, of North Carolina, in 1750, "mostly from Pensilvania and other parts of America, who are overstocked with people and some directly from Eu-

rope, they commonly seat themselves towards the West, and have got near the mountains." Squire Boone, the father of the great pioneer, removed with his entire family from Pennsylvania to Virginia and thence to North Carolina in the spring of 1750. Samuel Henderson, the father of the jurist-pioneer, removed even earlier from Hanover County, Virginia, to what was soon to be Granville County, North Carolina—at some time prior to 1742. It is believed the immigrant ancestors of the Shelby family settled in Maryland about the year 1730; and the earliest surveys and grants to Evan Shelby, junior and senior, make it reasonably certain that the Shelbys resided continuously in Maryland from 1739 or earlier until 1771 or 1772. About this time (1771-1772), the Shelby connection removed to the Holston country in that twilight zone of the debatable ground between North Carolina and Virginia. Evan Shelby settled with his family on the site of the present Bristol, Tennessee.

On December 11, 1750, near the North Mountain, in the vicinity of Hagerstown, Maryland, was born Isaac Shelby, distinguished figure in the history of the Old Southwest—the second son and third child of Evan Shelby and his first wife, Letitia Cox. Endowed with the iron constitution of his father, young Shelby was reared in a martial atmosphere and early adapted himself to the strenuous life of the pioneer. Upon their removal to King's Meadows, near Bristol, the Shelbys herded and grazed cattle on an extensive scale along the Virginia border. At Shelby's Station, the fort built by Evan Shelby, where hundreds were sometimes fortified during the Revolution, the Shelbys kept a store; and here Daniel Boone, according to records still preserved, purchased supplies in preparation for his ill-fated expedition in 1773.

In 1774, as the result of showing himself to be a young man of promise, Isaac Shelby was appointed lieutenant in the militia by Colonel William Preston, the County Lieutenant of Fincastle County, Virginia. He was soon to see service; for in October of that year occurred Dunmore's War, ending with the Battle of the Great Kanawha. The Holston men, who

were under the command of Col. William Christian, were the advance guard of civilization, the most daring settlers who had pushed farthest out into the western wilderness. Under Evan Shelby, one of the five captains in Col. Christian's command, were his sons: Isaac, a lieutenant, and James, a private. Of the important part played by the Shelbys in this battle I have written at length elsewhere.\* Suffice it to say that in this fierce struggle, the most stubborn and hotly contested fight ever made by the Indians in the Old Southwest against the English, it was the flanking movement of the detachment in which Isaac Shelby took a leading part that turned the tide and decided the victory for the whites. Isaac Shelby, the twenty-four year old officer, played an important and heroic role in this decisive battle—the thrilling martial scene preliminary to the great drama of the Revolution.

At the close of the campaign, a small palisaded rectangle, about eighty yards long, with block houses at two of its corners, was erected at Point Pleasant by order of Lord Dunmore. This stockade, entitled Fort Blair, was strongly garrisoned, and the chief command was given to that splendid border fighter, Captain William Russell. The young Isaac Shelby, in recognition of his valued services in the recent battle, was made second in command. It was here, according to tradition, that the great Indian chief, Cornstalk, came to shake the hand of the young paleface brave, Isaac Shelby, who had led the strategic flank movement which stampeded his army.

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\* *Isaac Shelby: Revolutionary Patriot and Border Hero.* In two parts. "North Carolina Booklet," January, 1917, and July, 1918.

## CHAPTER II

### THE SOUTHWESTWARD MOVEMENT—THE HENDERSONS

In the middle years of the eighteenth century, attracted by the lure of rich lands in North Carolina, many families of Virginia gentry, principally from Hanover County, settled in the region ranging from Williamsborough on the east to Hillsborough on the west. These settlers were described by the quaint old diarist, Hugh McAden, as a people with "abundance of wealth and leisure for enjoyment." Some years later, Governor Josiah Martin, in speaking of the inhabitants of Granville and Bute counties, observed: "They have great pre-eminence, as well with respect to soil and cultivation, as to the manners and condition of the inhabitants, in which last respect the difference is so great that one would be led to think them people of another region." This society, to quote the words of Turner concerning the people of the Virginia Piedmont, was "a society naturally expansive, seeing its opportunity to deal in unoccupied lands along the frontier which continually moved toward the west, and in this era of the eighteenth century dominated by the democratic ideals of pioneers rather than by the aristocratic tendencies of slave-holding planters."

When Samuel Henderson removed to North Carolina, the great frontier county of Granville embraced an immense territory which included the present county of Granville. At this time, the country was very sparsely settled; and Samuel Henderson and his family, who were among the very earliest settlers, were the first to carry hogs and apple scions into that section. Dr. J. F. D. Smyth, an Englishman, who visited the neighborhood in 1774 and 1775, speaks of the "very fine settlement called Nutbush," and the "large body of excellent land." By 1749, Granville had about 3,000 inhabitants, in 1763 some 4,000. The adjoining county of Orange showed an equally remarkable growth in population. In the *South Carolina Gazette* of March 8, 1768, may be read the following interesting comment:

"A letter from Williamsburgh, Virginia, dated October 18, 1767, says: There is scarce a history, ancient or modern, which affords an account of such a rapid and sudden increase of inhabitants in a back frontier country, as that of North Carolina.

"To justify the truth of this observation, we need only to assure you, that 20 years ago there was not 20 taxable persons within the limits of the county of Orange, in which there are now 4,000 taxable."

In his search for a settlement, the Moravian Bishop Spangenburg records that the "culture of Indian corn and raising of hogs" were the principal industries of the farmers of Granville county. Probably the largest land owner in the county at this period was William Person, who called himself "Parson," sheriff of the county in 1754.

Several years after his settlement on Nutbush Creek, Samuel Henderson was elevated to the office of high sheriff of Granville county. According to the family records, Enfield court house was the seat of Samuel Henderson's office as sheriff. Undoubtedly, the most important and onerous of his duties as sheriff was the collection of taxes. The taxables consisted of "all the white males above 16 years of age, and all mulattoes, masters and slaves, male and female, above the age of 12," and by this list the sheriff collected all the public or provincial poll. The sheriff was legally empowered to distrain for all these taxes and was entitled to a fee of two shillings and eight pence currency for every distress. The sheriff had to be a freeholder of the county in order to qualify, held his office through the Governor's appointment, and had to "find surety for 1,000 pounds sterling that he should faithfully discharge the duties of that office and account for and pay all public and private moneys by him received as sheriff."

Samuel Henderson was a man of strong and rugged frame, and always "executed his writs, subpoenas, and processes, afoot through the forest primeval, traversing a territory from Virginia on the north to Johnston county on the south, and from the mountains on the west to Northampton on the east"



(R. W. Winston's Address on Leonard Henderson). Most of the official duties of his office, during his absences, were performed by his deputy or by his son, Richard, the sub-sheriff. Samuel was "a man of social and benevolent disposition, his talents of the middle grade"—the words employed by his son Pleasant, in his memoir. In the event, we need not be surprised that Richard Henderson, with so active, strong, and rugged a progenitor, should develop into one of the most remarkable pioneers, colonizers and law-givers of his time. Before his death in 1784, Samuel Henderson enjoyed the satisfaction of seeing both his son and his nephew upon the highest court of law—the first in the colony, the second in the state, of North Carolina. At a somewhat later day, two of his grandsons were to win the highest legal and judicial positions the State could offer, the one the recognized leader of the bar, the other Chief Justice of the Supreme Court of North Carolina.

From his father, indubitably, Richard Henderson derived his unflagging energy and powerful physique. But it was from his mother, assuredly, that he derived those remarkable qualities of originality and constructive power which in after life won him such noteworthy distinction, and enabled him to play a leading role in the initial colonization that assured the ultimate acquisition of the West. Elizabeth Williams, Richard Henderson's mother, born in Hanover county, Virginia, on November 14, 1714, was the daughter of John Williams, a wealthy emigrant from Wales. In the memoir written by her son Pleasant, she is described as a woman of exemplary life and unusual talents, possessing a "strong and comprehensive mind"—and ever "chastened by a due sense of futurity, and the advantages temporal as well as eternal of doing as she would wish to be done by" (underscored in the original memoir). She was the mother of twelve children, one of whom lived only a few days; Mary, born in Hanover county, Virginia, January 10, 1734; Richard, born in Hanover county, April 20, 1735; Nathaniel, born in Hanover county, December 1, 1736; Elizabeth, born in Hanover county, Feb-

ruary 19, 1738; Ann, born in Hanover county, March 13, 1739; Susanna, born in Granville county, N. C., April 23, 1742; John, born in Granville county, October 24, 1744; Samuel, born in Granville county, February 6, 1746; William, born in Granville county, March 5, 1748; Thomas, born in Granville county, March 19, 1752; and Pleasant, born in Granville county, January 9, 1756.

In consequence of the positive lack of either public schools in the county or of colleges in North Carolina, the elder children of the Henderson family, as recorded in Pleasant Henderson's memoir, were taught by a private tutor, especially engaged by their father to give them individual instruction. This was an unusual privilege in those days of hardy virtues, but limited educational facilities.

In the prosecution of the affairs of his office, Samuel Henderson was obliged to spend a large part of his time away from home. In consequence of this circumstance, as recorded by his grandson, he gave over the general direction of the education of the children, and of Richard in especial, to his wife, who, while not a woman of high culture in the exacting sense in which we employ the phrase today, has been described by her grandson as "excellent, industrious, and intelligent." Like George Washington and Benjamin Franklin, Richard Henderson found the lack of a university education no bar to his success. From the evidence before us, it is clear that Richard Henderson enjoyed excellent educational advantages in receiving the individual instruction of a private tutor, fortified as this educational discipline was by the directive impress of the powerful mentality of his mother. On another score, we should not forget that his was that ideal preparatory school lauded by Luther Burbank, "the only place that is truly fit to bring up a boy or a plant—the country."

It has been said of Richard Henderson that he possessed one of the most remarkable minds for the rapid acquisition and thorough assimilation of knowledge ever produced in the South. A talented, scholarly man, as described by that cautious and accurate historian, Lyman C. Draper, Richard Henderson was

a profound student of law, government, and history; and his brother, who studied law under his direction for considerably more than a year, enjoyed the benefits of his unusually fine library. It was, doubtless, not so much his researches in law and history, as his active participation in the practical duties of the affairs of his father's office which gave him, as the historian Wheeler says, "that enlarged knowledge of men and things for which he became so eminently distinguished in after life." During the term of his father's office, he served successively as constable, deputy, and acting sheriff, and often transacted for his father, in all its details, the business of the shrievalty. At the expiration of his father's term of office, Richard, "fired by a noble ambition," as Judge W. H. Battle puts it, devoted himself energetically to the study of the law, the natural and inevitable medium for the display of his mental qualities.

After reading law for a twelve-month with his first cousin and senior, the capable attorney, John Williams, who lived hard by in the neighborhood, on his fine estate of "Montpelier," Richard Henderson made so bold as to apply for a license. It was the custom of that day for the prospective barrister to present himself for examination before the Chief Justice of the "General Court." The certificate of proficiency, issued by the Chief Justice to those who successfully underwent the ordeal of examination, was then presented to the Governor of the Colony, who, after satisfying himself that all requirements had been properly met, issued the official license. The following incident of Richard's experience in the effort to obtain a license, after the brief period of his study (one year), as narrated by his brother, Pleasant, furnishes an admirable illustration of the mentality and self-confidence of Richard Henderson. It is, as his brother succinctly expressed it, "an evidence of the strength of his mind."

On presenting himself for his examination, the applicant, because of his youth, was regarded with dubiety by the Chief Justice, Charles Berry.

"How long have you read law, and what books have you studied?" he asked.

"Twelve months," replied young Henderson, enumerating the books he had read.

We may readily imagine the scornful smile of the Chief Justice, and the tone of his brusque reply:

"It is quite unnecessary, young man, to proceed with this examination. No man in such a short space of time, and with only the books you have mentioned, can possibly have qualified himself to secure a license. My advice to you, sir, is to return home."

This put young Henderson on his mettle—for although his experience in the law was limited, his sense of justice and fair play was already highly developed. In tones ringing with manly determination, he replied:

"Sir, I am an applicant for an examination. It is your duty to examine me, and if I am found worthy, to grant me a certificate; if otherwise, to refuse it."

Struck by the force of this spirited reply, yet none the less sharply nettled by having his duty thus concisely outlined for him by this country-bred youth, the Chief Justice proceeded to give him a most rigid and searching examination. As little daunted by this running fire of questions as he had been by the discouraging advice of the Chief Justice, young Henderson survived the ordeal with brilliance. His examiner was so much impressed both by his coolness under fire and his real knowledge of the law, that on presenting him his certificate, he paid him many encomiums upon his industry, acquirements and talents. His license was forthwith granted by the Governor of the Colony. Beginning his legal career with so favorable an augury, Richard Henderson almost immediately began to win, as his brother expressed it, great success in the practice of his profession.

### CHAPTER III

#### HENDERSON, BARRISTER AND JUDGE

This "very fine settlement called Nut Bush," as Smyth described it, with its "large body of excellent land," its rugged foothills, its solemn forests and fast flowing streams, brooded over by a spirit of reflective and majestic calm, was the natural *milieu* for the development of the figure known to history as Colonel Richard Henderson. Gathered about him were a host of friends and neighbors, congenial and high-souled folk—the Williamses, progenitors of a long line of famous men; the Bullocks, close relatives of the Hendersons, whom they had followed to Granville county from New Hanover county, Virginia, shortly before the middle of the century; the Penns, the most famous of whom was the noted John Penn, one of the signers of the Declaration of Independence; the Hargroves, Carringtons, Ridleys, and Baskervilles, "gentle folk possessed of broad acres, troops of slaves and dogs of all degrees."

Another neighbor was the Irish Lord, George Keeling, who had been driven from his seat in Parliament and suffered the confiscation of his property on account of his intense Protestantism. He emigrated to Virginia, and established a fishery on the banks of the Rappahannock river, improvising his own nets for catching herrings. Romantic glamour attaches to the authentic story that out of the proceeds of his earnings he sent to his sweetheart, Agnes Bullock, of Wales, a sum of money sufficient to pay her transportation across the Atlantic, where the protecting arms of her faithful betrothed awaited her.

On the death of Lord Keeling, John Williams, whose father, John Williams, was the brother of Richard Henderson's mother, married the widow Keeling, nee Agnes Bullock, on November 12, 1759. Agnes Bullock, sister of Leonard Henley Bullock and daughter of John Bullock and Ann Henley (daughter of Leonard Henley and Ann Hawkins), be-

longed to one of the most prominent and influential families of Granville county.

The youngest daughter of Lord Keeling and Agnes Bullock, Elizabeth, was married to Richard Henderson on December 28, 1763. Another daughter, Nancy, was married to Thomas Satterwhite on October 15, 1772; while a third daughter, Frances, was married to Bromfield Ridley, a prominent lawyer of Granville county, on February 18, 1770. The only child of John Williams and Agnes Bullock, the widow of Lord Keeling, was Agatha, who was married to Colonel Robert Burton, originally of Mecklenburg county, Virginia, and sometime member of the Continental Congress, on October 12, 1775.\*

Richard Henderson found a worthy mate in the person of his wife, Elizabeth. "It may not be amiss to mention here," says the Hon. W. H. Battle, in his "Memoir of Leonard Henderson" (North Carolina University Magazine, lx, 1859-60), as an evidence of the simplicity and frugality of the times, as well as of the prudence and industry of the matrons of his day that his mother (Elizabeth Keeling), though the wife of one of the highest officers of the province, taught her eldest sons, as well as her daughters, to card and spin. Why Leonard was not instructed in the same housewifely accomplishment we are not informed. The splendid professional career of one of his elder brothers, Archibald, shows that though it might not have advanced, it certainly would not have obstructed his upward course to fame and fortune."

Richard Henderson's auspicious beginning at the law, in his notable tilt with Chief Justice Charles Berry, was prophetic of the eminent success he was successively to win as advocate, King's Attorney, Superior Court Judge, and ultimately lawmaker for the colony of Transylvania and the famous "Government of the Notables" on the Cumberland. His taste for the study of law, history, and literature found expression in the splendid library which he had collected; and it was in

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\* The original marriage bonds of all these marriages are still preserved in the court house at Oxford, N. C.

this library and under his tutelage, in after years, that his younger brother, Pleasant, devoted almost two years to reading and the study of legal lore. Though only twenty-eight years old at the time of his marriage, Richard Henderson had already achieved striking success in the practice of his profession. The earliest court record now to be found at Oxford, N. C., the trial docket of the County Court for the May term, 1763, shows that both Richard Henderson and his law-partner, John Williams, were engaged in an extensive practice. The court records at Salisbury, N. C., show that on September 22, 1763, Richard Henderson was appointed King's Attorney for the district of Salisbury to serve at the October term of the Court of Pleas and Quarter Sessions. This same year we find him pitted against John Williams, his senior, in a number of cases on the Crown Docket in September, at Salisbury.

The court records of the Reference Crown Docket, at the March term, 1764, for the District of Salisbury, show that a large proportion of the cases were entrusted to Richard Henderson for advocacy and trial. Here his colleagues and fellow advocates were the cultured and stately William Hooper, afterwards famous as a signer of the Declaration of Independence; John Dunn, persecuted Loyalist and subsequently good American; John Kichen, the sagacious legal counsellor; Edmund Fanning, the gentleman adventurer, the Associate Justice; Alexander Martin, vigorous politician, afterwards Governor of North Carolina, who was frequently commissioned by the Crown to hold the District Court at Salisbury, notably in June, 1775, when Captain Jack, on his way to Philadelphia with an account of the Mecklenburg proceedings, passed through Salisbury and allowed the account to be read aloud by Col. William Kennon; and many others of future prominence and distinction. Here and at Hillsboro, he was thrown into close association with the discreet and reliable Thomas Hart, and during the earliest days of his practice at Salisbury, he formed the acquaintance, subsequently ripening into sincere regard, of the hunter, Daniel Boone, and of his father, Squire

Boone, who served continuously as one of the "Worshipful Justices" at the County Court of Pleas and Quarter Sessions for many years dating from the first sittings of the court in 1753.

Richard Henderson was frequently called upon to serve as King's Attorney during the years from 1763 to 1768; and his genial nature and conspicuous ability brought him at once general popularity and high distinction. A contemporary, in speaking of Richard Henderson's practice and advocacy in the Superior Court, then the highest court of judicature in the province, pays him this distinguished tribute:

"Even there, where oratory and eloquence is as brilliant and powerful as in Westminster Hall, he soon became distinguished and eminent and his superior genius shone forth with great splendor and universal applause."

Following the dissatisfaction of the people with the constitution of the courts of law under Governor Dobbs during the years from 1760 to 1762, a "Supreme Court of Justice" was established in the districts of Edenton, Newbern, Salisbury, Wilmington and Halifax, to be composed of the Chief Justice and an assistant judge. In 1767, a new and much more elaborate court system was adopted, to endure for a period of five years. The Province was divided into six judicial districts, Hillsboro being added to those above mentioned. In each was a court to be held by the Chief Justice and two associates, the latter appointed by the Governor and allowed 500 pounds a year, for payment of which a special tax on each wheel of a pleasure carriage, and on lawsuits was laid. "This system," says Dr. Kemp P. Battle in his "History of the Supreme Court of North Carolina," (103 N. C. Reports), "was an essential departure from the English system. Instead of the judges trying questions of fact only in the districts, leaving the question of law to be heard before all the judges sitting in bank at Newbern, all the members of the court went to the court house of each district and there heard both questions of fact and questions of law. The Nisi Prius Court and the Appellate



Court were held in the same town by the same judges, and during the same term. A great defect was that one Judge, in the absence of the others, had all the powers of the court."

At a meeting of the Governor's Council on March 1, 1768, at Wilmington, there being present Governor Tryon and James Hassell, John Rutherford, Lewis DeRossett, William Dry, Benjamin Heron, and Samuel Strudwick, members of the Council, the Governor announced his intention to appoint Richard Henderson, Esq., of Granville, an Associate Justice, he having formerly appointed Maurice Moore as the other Associate Justice, and Stephen Dewey as Judge Advocate for the District of Newbern, pending the meeting of the Council. The Council journal reads: "It is the unanimous opinion of this board that the said three gentlemen are properly qualified for the several offices." At the meeting of the next Superior Court, held at Salisbury, beginning March 5, 1768, Richard Henderson took his seat with Maurice Moore upon the bench, the entry in the court records of Rowan County reading: "This day Richard Henderson, Esq., produced His Majesty's commission from His Excellency, the Governor, and under the great seal of the Province, thereby constituting and appointing him, the said Richard Henderson, one of His Majesty's Associate Justices of this Province who was qualified according to law by taking the oaths by law appointed for that purpose and repeating and subscribing to the test."

In the appointment of Henderson to this position, the Governor gave some voice to the western section of the Colony. At this time, be it recalled, the east was vastly the more favored section. All the members of the Council were from the east, as were also the two other Superior Court Justices and the Attorney General. Moreover, five eastern counties sent five members each to the Assembly whereas other counties in the Province sent only two. Richard Henderson was signally honored, as a leading and representative man of his section, in being appointed as the sole high officer in the government from the entire western section of the colony.

The high regard in which Richard Henderson was held

by the people of his own section and by the Governor himself, is best evinced by the letter of Governor Tryon to the Earl of Shelburne, from Brunswick, March 4, 1768:

"Mr. Henderson is a gentleman of candor and ability, born in Virginia and about 33 years of age. He lives near Hillsborough in the back country, among a people whom I am persuaded will be happy at having such a distinction paid to one who resides among them, and for whom they entertain an esteem." (Colonial Records, VII, 697.)

## CHAPTER IV

### PRELIMINARIES OF THE REGULATION

The new Superior Court of North Carolina, Martin Howard, Chief Justice, and Maurice Moore and Richard Henderson, Associate Justices, constituted under the court law of 1767, was soon called upon to render judgment in matters arising out of the Regulation agitation. The exceptional scarcity of currency, the disastrous consequences of which were escaped in the eastern part of the province through the convenient system of warehouse certificates, fell most heavily upon the poorer people of the frontier western counties. Ignorance of the exact amount of the fees legally allowable under a loosely drawn fee bill was by no means confined to the uneducated people of the province. The Regulators living in the frontier counties, who were for the most part uncultured, violently resented, naturally enough, the devious and questionable devices employed by the sheriffs, registers, and clerks, to compel them to pay far more than was either just or right. An enormous proportion of the taxes, as was well known to the Regulators, never went into the public treasury at all, but was embezzled by the dishonest sheriffs. Staggering under the burdens of inadequately proportioned taxes, dishonest officers, exorbitant fees, and an alarming scarcity of currency, the people were ripe for agitation and revolt.

Edmund Fanning, around whom raged the fury of the Regulators, settled at Hillsborough in 1762, having been graduated five years before from Yale College. In March, 1763, he qualified as register of Orange County; and from that date, by his contempt for the masses of the people and his efforts to exploit them for his own pecuniary gain, he aroused the undying hostility of the regulating element.

Confident in the power conferred by large numbers, the Regulators on April 8, 1768, entered Hillsborough, took from the sheriff a horse which had been levied on for taxes, and departed with derisive shouts, after maltreating the sheriff

and others, and shooting up the house of Edmund Fanning. When Fanning, who was Colonel of the Orange County militia, and Lieutenant Colonel John Gray took steps to muster into service the local troops in order to suppress like displays of lawlessness and mob violence, the news so incensed the Regulators that they threatened to raise a force of 1500 men, march into Hillsborough, and burn down the town if their demands were not complied with. Warrants were issued for two of the leaders of the insurrection, Husband and Butler, who were immediately arrested by a posse led by Thomas Hart, former sheriff of the county, but subsequently released on bail. Governor Tryon proceeded to Hillsborough for the purpose of attempting to pacify the discontented faction; but so widespread was the disaffection that all his efforts proved unavailing. Thereupon he ordered out the militia, marched through Rowan and Mecklenburg counties, embodying troops on the way, and finally held a grand review at Salisbury on August 23, 1768. The governor addressed the troops in person, assuring them that a Superior Court to try those concerned in the recent disturbance had been ordered convened at Hillsborough and that an armed force was necessary for its protection.

At the session of the Superior Court, held by Justices Howard and Henderson, beginning on September 23, the three insurgents on trial were found guilty of a riot and rescue, and sentenced as follows: William Butler to a fine of fifty pounds and six months' imprisonment; and Samuel Devinney and John Philip Hartzo, each, to a fine of twenty-five pounds and three months imprisonment. About a year later, the governor, acting on the advice of his sovereign, pardoned by proclamation all those who had been found guilty on these charges.

The real crux of the situation, which was to be settled at the same sitting of the court, was the trial of Edmund Fanning, register, and Francis Nash, clerk, of Orange County. Fanning pleaded a misconstruction of the fee bill. The court took an *advisari* on his motion in arrest of judgment and for a new trial; and the matter was still pending and undecided

at the breaking up of the court in September, 1770. At the first meeting of the Regulators in Orange County in 1766, Francis Nash, who earnestly desired to adjust matters equitably, wrote them that he would refund to anyone aggrieved any fee charged by him which the Superior Court might hold excessive; and again in 1768, he and Fanning made the same offer to the Regulators. Whilst Fanning escaped punishment on these suits, there is no reason to doubt that he had taken advantage of his office to construe the fee bill in such ways as to mulct the common people in unjust and exorbitant fees. The court had found him guilty of taking too high fees, but acquitted him of the "least intentional abuse." Their failure to secure punishment for the most insidious of all their oppressors, who always treated them with "insufferable hateur," fortified in the Regulators the determination to call Fanning to personal account for the offense which, as they saw it, the jury had adjudged him guilty of, but failed to punish him for. In the diary of Waightstill Avery, a native of Norwich, Connecticut, a graduate of Princeton, and now a young barrister residing in Salisbury, we read as follows:

MARCH 16 AND 17, 1769. In company with the Judge (Richard Henderson), Colonel Fanning, and Mr. Hooper set out for Hillsborough.

MARCH 18, 19 AND 20. Where we arrived on Monday the twentieth, having been waylaid by the Regulators who had formed an ambuscade to kill Colonel Fanning.

In Rowan County, in this same year, the efforts of the Regulators to secure indictments against the court officials proved even less successful than the suits in Orange against Fanning. At their instance, William Hooper, recently appointed Deputy Attorney General, drew up a bill against John Frohock for extortion. This was returned *ignoramus*. Three other indictments, involving the other two Frohocks, William and Thomas, proved equally unsuccessful. It seems clear that in these cases the Regulators, while having good cases against these corrupt county officials, were unsuccessful in securing either adequate evidence in support of their charges or adequate legal presentation of their cases.

## CHAPTER V

### REGULATION AND INSURRECTION

During the summer of this year, the Regulators prepared an elaborate petition to the justices of the Superior Court, detailing the history of their agitation and the grounds for protest, and urgently praying for redress of their grievances. The tone in which the conclusion of the petition was couched was ominous and threatening, revealing the determination of the Regulators to take the law into their own hands, if the law were not administered, whether justly or unjustly, in their favor:—

“Our only crime with which they can charge us is virtue in the very highest degree, namely, to risk our all to save our country from rapine and slavery in our detecting of practices which the law itself allows to be worse than robbery. If we [do not] obtain this (the substance of the petition) that we may have some security for our properties more than the bare number of our officers, we can see plainly that we shall not be able to live under such oppressions and to what extremities this must drive us you can as well judge as we can ourselves. As we are serious and in good earnest and the cause respects the whole body of people it would be a loss of time to enter into arguments on particular points, for though there are a few men who have the gift and art of reasoning, yet every man has a feeling and knows when he has justice done him as well as the most learned.”

Saturday, September 22, the court convened—at which time the court adjourned until Monday, after the defiant threat, euphemistically called petition, had been handed to Richard Henderson, the only justice present, by James Hunter. Monday morning, at 11 o'clock, Richard Henderson opened the court alone, none of the other justices being present at Hillsborough; and Henry Pendleton, Esq., appeared as attorney for the Crown. The court house, a simple, frame structure characteristic of the period, was located in the square

in which the present court house now stands, with the prison and stocks in the rear. Nearby was the market house erected some time prior to 1768; the store of the firm of Johnston and Thackston occupied the southwest corner of the intersection of King and Churton streets, the court house the southeast corner, and the other stores the remaining corners.

Leading men of the day, many of them famous at a later period, were present at this term of court:—John Williams, of Granville, afterwards delegate to the Continental Congress, and Superior Court Judge after the Revolution, a genial, kind-hearted man; Alexander Martin, Revolutionary patriot, Governor of North Carolina, and United States Senator, in turn; Francis Nash, former clerk of the court, and subsequently distinguished as a Brigadier General in the Revolution, being killed at the Battle of Germantown; Thomas Hart, former sheriff of the county (1762-1763), the only sheriff, as the Regulators themselves stated, who settled his accounts; John Luttrell, clerk of the Crown, later an officer in the Revolution, killed in battle; John Cooke, clerk of the Superior Court; Tyree Harris, ex-sheriff, who had aroused the especial ire of the Regulators; Lieut. Col. John Gray and Maj. Thomas Lloyd, chairman of the County Court, both of whom had been active in raising the county militia to suppress the Regulators in 1768; Michael Holt, a gentleman-farmer and a man of repute; Edmund Fanning, gentleman-adventurer, the chief object of Regulation vengeance; and others of like distinction and position. The most authentic account of the "hold-up" of the session of the Superior Court and of the indignities visited upon many respected and eminent citizens, is found in the letter of Judge Henderson to Governor Tryon, written from his home in Granville county, of date September 29, 1770. This letter, impartial in its essential points, is here reproduced in full:

"SIR,

"With the deepest concern for my country I have lately been witness to a scene which not only threatened the peace and well-being of this Province for the future, but was in

itself the most horrid and audacious insult to government, perpetrated with such circumstances of cruelty and madness as (I believe) scarcely has been equaled at any time. However flattering your Excellency's prospects may have been in respect to the people called Regulators, their late conduct too sufficiently evinces that a wise, mild and benevolent administration comes very far short of bringing them to a sense of their duty. They are abandoned to every principle of virtue and desperately engaged not only in the most shocking barbarities but a total subversion of the Constitution.

"On Monday last being the second day of Hillsborough Superior Court, early in the morning the town was filled with a great number of these people shouting, hallooing and making a considerable tumult in the streets. At about 11 o'clock the court was opened, and immediately the house filled as close as one man could stand by another, some with clubs, others with whips and switches, few or none without some weapon. When the house had become so crowded that no more could well get in, one of them (whose name I think is called Fields) came forward and told me he had something to say before I proceeded to business. The accounts I had previously received together with the manner and appearance of these men and the abruptness of their address rendered my situation extremely uneasy. Upon my informing Fields that he might speak on, he proceeded to let me know that he spoke for the whole body of the people called Regulators. That they understood that I would not try their causes, and their determination was to have them tried, for they had come down to see justice done and justice they would have, and if I would proceed to try those causes it might prevent much mischief. They also charged the court with injustice at the preceding term and objected to the jurors appointed by the Inferior Court and said they would have them altered and others appointed in their room, with many other things too tedious to mention here. Thus I found myself under a necessity of attempting to soften and turn away the fury of these mad people, in the best manner in my power, and as such could



well be, pacify their rage and at the same time preserve the little remaining dignity of the court. The consequence of which was that after spending upwards of half an hour in this disagreeable situation the mob cried out, 'retire, retire, and let the court go on.' Upon which most of the Regulators went out and seemed to be in consultation in a party by themselves.

"The little hopes of peace derived from this behavior were very transient, for in a few minutes Mr. Williams, an attorney of that court, was coming in and had advanced near the door when they fell on him in a most furious manner with clubs and sticks of enormous size and it was with great difficulty he saved his life by taking refuge in a neighboring store house. Mr. Fanning was next the object of their fury, him they seized and took with a degree of violence not to be described from off the bench where he had retired for protection and assistance and with hideous shouts of barbarian cruelty dragged him by the heels out of doors, while others engaged in dealing out blows with such violence that I made no doubt his life would instantly become a sacrifice to their rage and madness. However, Mr. Fanning, by a manly exertion miraculously broke hold and fortunately jumped into a door that saved him from immediate dissolution. During the uproar several of them told me with oaths of great bitterness that my turn should be next. I will not deny that in this frightful affair my thoughts were much engaged on my own protection, but it was not long before James Hunter and some other of their chieftains came and told me not to be uneasy for that no man should hurt me on proviso I would sit and hold court to the end of the term.

"I took advantage of this proposal and made no scruple at promising what was not in my intention to perform for the terms they would allow me to hold court on were, that no lawyer, the King's Attorney, excepted, should be admitted into court, and that they should stay and see justice impartially done.

"It would be impertinent to trouble your Excellency with many circumstances that occurred in this barbarous riot.

Messrs. Thomas Hart, Alexander Martin, Michael Holt, John Luttrell (clerk of the Crown) and many others were severely whipped. Col. Gray, Major Lloyd, Mr. Francis Nash, John Cooke, Tyree Harris and sundry other persons timorously made their escape or would have shared the same fate. In about four or five hours their rage seemed to subside a little and they permitted me to adjourn court and conducted me with great parade to my lodgings. Colonel Fanning, whom they had made a prisoner of, was in the evening permitted to return to his own house on his word of honour to surrender himself next day. At about 10 o'clock that evening, I took an opportunity of making my escape by the back way, and left poor Colonel Fanning and the little borough in a wretched situation.

"Thus far may it please your Excellency with respect to what came within my own knowledge. Since my departure many different and authentic accounts say that the mob, not contented with the cruel abuse they had already given Mr. Fanning in which one of his eyes was almost beaten out, did the next day actually determine to put him immediately to death, but some of them a little more human than the rest, interfered and saved his life. They turned him out in the street and spared his life on no other conditions than that of taking the road and continuing to run until he should get out of their sight. They soon after, to consummate their wicked designs, broke and entered his mansion house, destroyed every article of furniture, and with axes and other instruments laid the fabric level with its foundation, broke and entered his cellar and destroyed the contents, his papers were carried into the streets by armfuls and destroyed, his wearing apparel shared the same fate; I much fear his office will be their next object. Have not yet heard where Colonel Fanning has taken shelter, the last advice was that he was a mile or two from town on horseback, but the person by whom this came says that the insurgents have scouting parties constantly traversing the several roads and woods about town and should he unfortunately fall into their hands the consequences perhaps would be fatal.

The merchants and inhabitants were chiefly run out into the country and expect their stores and houses without distinction will be pillaged and laid waste.

"The number of insurgents that appeared when the riot first began was, I think, about 150, though they constantly increased for two days and kept a number with firearms at about a mile distant from town ready to fall on whenever they were called for. This amount is contradicted by some and believed by others; certain it is that a large number of men constantly lay near the town, whether they had arms or not is not yet sufficiently determined.

"As the burden of conducting Hillsborough Superior Court fell on my shoulders alone, the task was extremely hard and critical. I made every effort in my power consistent with my office and the duty the public is entitled to claim to preserve peace and good order, but as all attempts of that kind were ineffectual, thought it more advisable to break up court than sit and be made a mock judge for the sport and entertainment of those abandoned wretches.

"This express has been delayed two days in expectation of obtaining from Mr. Fanning a more particular account of the damage done him as well as the rest of the inhabitants of that desolate borough, but as the persons whom I sent for that purpose are not yet returned, think it my duty to forward this with the utmost expedition. Should my conduct through the transactions merit your approbation it will greatly add to the felicity of

"Sir,

"Your Excellency's most obedient and obliged humble servant,

RICHARD HENDERSON.

"To his Excellency Governor Tryon.

"P. S. My express has this instant arrived from Hillsborough with the following accounts: Colonel Fanning is alive and well as could be expected. The insurgents left the town on Wednesday night having done very little mischief after spoil-

ing Mr. Fanning's house except breaking the windows of most of the houses in town, among which Mr. Edwards' did not escape. The merchants and others are taking possession of their shattered tenements. Mr. Fanning's house is not quite down, a few timbers support the lower story, but they are cut off at the sills and a small breeze of wind will throw down the little that remains. Everything else that we heard of Mr. Fanning is true with this addition that he lost upwards of 200 pounds in cash.

"Inclosed is a petition presented me on Saturday by James Hunter, that being the first day of the court, the answer was delayed till Monday. Your Excellency may best judge if that paper may not be of service at a future day. There are many subscribers who are all without dispute Regulators.

I am as before,

"R. H."

In the account published in the *New York Gazette*, being correspondence from Newbern, dated October 5, 1770, some additional facts not contained in Henderson's letter may be gleaned. On ascending the bench, the Regulators ordered Judge Henderson "to pursue business," but in the manner in which they should prescribe, which was that no lawyers should enter the court house, no juries but what they should pack, and order new trials in cases where some of them had been cast for their malpractices. Furthermore, they seized Mr. William Hooper, Assistant Attorney General, and afterwards one of North Carolina's notable men; "dragged and paraded him through the streets, and treated him with every mark of contempt and insult." But for the accident of being at the home of Mr. William Johnston, some miles from Hillsborough, doubtless Mr. James Iredell, at that time attorney and subsequently Justice of the United States Supreme Court, would have suffered shameful indignities at the hands of the Regulators (McRee's "Life of James Iredell," ii, 379). During the riot of the second day, after destroying Fanning's house and contents, "they went to a large, handsome church bell,

that Colonel Fanning, at the expense of 60 or 70 pounds had made a present to the Church of Hillsborough and split it to pieces and were at the point of pulling down the church; but their leaders, thinking it would betray their religious principles, restrained them." They destroyed the church bell under a ludicrous misapprehension that it was a spice mortar! (Caruthers' Life of Caldwell, note, p. 133.)

Fanning they hunted out of town with dogs at his heels, stoning him as he fled; and to show their opinion of lawyers, "they took from his chains a negro that had been executed some time, and placed him at the lawyer's bar." At the court house, they held court, one of the Regulators sitting on the bench as judge, another acting as sheriff, and still another, one Yorke, as clerk. According to tradition, the Regulators before hunting Fanning out of town, made him plead law at the mock court which they had set up. (Caruthers' Life of Caldwell, p. 132.) The court records still preserved at Hillsborough bear the entries made by the Regulators, in disposing of the cases then on the docket, reeking with billingsgate and profanity, and invariably deciding all cases in favor of those of "regulating principles." Some of the entries well take the measure of the caliber and temper of the Regulators. "Damned Rogues," "Fanning pays cost but loses nothing," "Hogan pays and be damned," "Negroes not worth a damn. Cost exceeds the whole," and in a case for "slander," the entry: "Nonsense, let them agree for Ferrell has gone hellward," and again, "Judgment by default, the money must come to officers."

Upon the book which bears these entries, with the title "Trial Causes to Hillsborough Superior Court, September Term, 1770," may still be read the significant entry:

"Several persons styling themselves Regulators assembled together in the court yard, under the conduct of Herman Husbands, James Hunter, Rednap Howell, William Butler, Samuel Deviney and many others, insulted some of the gentlemen of the bar, and in a violent manner went into the court house and forcibly carried out some of the attorneys and cruelly beat them. They then insisted that the judge should proceed

to trial of their leaders, who had been indicted at a former court, and that the jury should be taken from out their party.

"Therefore, the judge, finding it impossible to proceed with honor to himself and justice to his country, adjourned court until tomorrow morning at 10 o'clock, and took advantage of the night and made his escape, and the court adjourned until court in course.

"Minute Docket, September 22, 1770."

Richard Henderson was recognized everywhere throughout the colony as a fair and just judge. During those stirring times, the Superior Court, the highest court in the Colony, stood as a bulwark between the mob and the objects of its animosity. The proposals, with which the Regulators wished Henderson to comply, were a scandalous travesty of justice, a mockery of the first principles of equity. No charge of injustice in the administration of his office was ever made against Henderson. It is a noteworthy circumstance that, although the Regulators were rebelling against legal tyrannies and the alleged injustices of county officials, they visited no violence upon Judge Henderson and subjected him to no indignities, whilst soundly thrashing, or attempting to thrash, a number of men afterwards of great eminence and distinction in North Carolina. There were some threats by the more unruly of the mob; but Judge Henderson was protected from personal violence and indignity—the very last course to be pursued by the Regulators had he been identified in their minds with injustice, oppression or condonement of extortion. It is less a credit to the lawless mob of the Regulators than a testimonial of the people's confidence in Henderson as a just judge that they abstained from doing him bodily violence. In so far, at least, the mob refrained from degrading those principles of society which, by virtue of his position and office, were vested in his person. Henderson refused to yield to the dictates of lawless and incensed anarchists, abandoned the hopeless effort to hold the court and returned to his home.

The community of Hillsborough was terrorized, the countryside in a state of violent and uncurbed insurrection. With-

out the support of an armed force, the court was powerless; and military protection was not to be expected of a people utterly terrorized by a mob which shot up Hillsborough with all the dare-devil recklessness and wild bravado of a band of Western cowboys. This mob was furthermore doubly dangerous in that it was animated with a spirit of vengefulness against chosen objects of their wrath, many of whom were wholly innocent of offense. Henderson adjourned court *sine die*: it was "Hobson's choice." Like another North Carolina jurist who had learned the law under Richard Henderson's own son, in a civil crisis a century later he realized that "the power of the judiciary was exhausted."

The failure of the legal machinery of the Colony to control the Regulating mob had already been recognized by Judge Maurice Moore in his letter of March 13, 1770, to the Governor, from Salisbury, in which he points out that the designs of the insurgents went further than to promote inquiry into the conduct of civil officers. According to his information, "there is no such thing as collecting the public tax, or levying a private debt among them (the Regulators)." Ominous and prophetic are his words: "This is an evil, sir (tho' cognizable in the courts of law) no civil process can remedy." (Col. Rec., VIII, 192.)

At a meeting of the Governor's Council, on October 18, was read the opinion of the Attorney General upon the offenses contained in Judge Henderson's report of the Hillsborough riot. The Attorney General's opinion contained these words: "That the menaces thrown out against, and the insult offered Mr. Justice Henderson when in the execution of his office, and the Insurgents preventing him from holding out the term there, will be construed in law only a misdemeanor, though of the highest nature." The pulling down of Fanning's house and the assaults upon numerous citizens were construed as a riot; and the words of the Regulators, in drinking "damnation to King George and success to the Pretender," were construed as, in all probability, amounting

to high treason—had they been supported by more ample and conclusive evidence. In his report to Lord Hillsborough, on October 7, Governor Tryon wrote of the Hillsborough riot: "After they had offered many insults to the dignity and proceeding of the court, they committed such outrages in the town that Mr. Henderson, the Associate Judge, was forced to put an end to the court by making his escape in the middle of the night." (Col. Rec., VII, 248.)

The sentiment which animated the mob at Hillsborough was not one of animosity against Judge Henderson, personally. The Regulators had been ingratiated by Chief Justice Howard's leniency and considerate attitude. The only record of objection to Judge Henderson was voiced by an agitator and Regulator, one Thomas Hamilton, who was heard by Waightstill Avery on March 6, to harangue a group of excited Regulators near Salisbury, in the following words: "What business has Maurice Moore to be judge, he was not appointed by the King, he nor Henderson neither. They'll neither of them hold court." (Col. Rec., VIII, 518-520.) The grievance was not expressed out of pure prejudice or personal animosity; the protest was directed against the system of judicial appointment, the selection of the associate justices by the Governor, and not by the King. It is true, however, that Maurice Moore was actually held in especial detestation by the Regulators. Upon one occasion, he was roundly denounced by the Regulators as "rascal, rogue, villain, scoundrel" and other, unprintable terms and even threatened with flogging and still worse, with death, if he attempted to hold court at Salisbury. (Col. Rec., VIII, 520.)

The demands made of Judge Henderson by the treasonable mob at Hillsborough, had he attempted to accede to them, which is inconceivable, would have resulted in a scandalous travesty of justice. It was only after Henderson failed to comply with their revolutionary proposals, subversive of all law and social order, and had escaped from their clutches, that the Regulators formed the determination to vent upon him their baffled rage and incendiary revenge. On November 18, Gov-



ernor Tryon reported to a meeting of his council at Newbern that Judge Henderson had just acquainted him with most startling information. An express from Granville county had informed Judge Henderson on the evening of Sunday, November 18, that on Monday, November 12, his barn and stables had been set fire to and consumed together with several horses and a quantity of corn, and that on the night of the Wednesday following his dwelling was set fire to and consumed. A proclamation was accordingly issued by the Governor, requiring all civil officers to assist in apprehending the incendiaries, and offering a reward of 100 pounds to anyone who should apprehend the criminal or criminals. Something little short of financial ruin, assuredly, was the price which Richard Henderson paid for his devotion to due process of law.

In February, 1771, a court having been ordered to sit at Hillsborough, the Chief Justice and his two associates submitted a remonstrance to the Governor, which eloquently testifies to the social revolution then in progress in North Carolina:

"SIR,

"Your Excellency having signified to us your opinion that it is expedient that the Chief Justice, Associate Justices and Attorney General should attend the ensuing court at Hillsborough, we do acquaint Your Excellency that we have conferred together upon the subject, and considering the violences committed there at the last court, and being well informed that the disturbances and distractions in the district are rather increasing than declining, we submit it to Your Excellency as our opinion that we cannot attend that court with any hopes of transacting the business of it; or, indeed with any prospect of personal safety to ourselves.

"MARTIN HOWARD, C. J.

"M. MOORE,

"R. HENDERSON,

"March 18, 1771, Newbern."

In their letter to Governor Tryon from Salisbury, of March 18, 1771, John Frohock and Alexander Martin reported that, at a conference with some 400 or 500 Regulators nearby on the Yadkin, the Regulators expressed concern when they learned that the judges "did not think it prudent to hold court in Salisbury under the direction of whips and clubs." They said "there would have been no danger for the Chief Justice to have held a court, but as to the associates they were silent"—showing their continued animosity against the hated Moore, and against Henderson upon whom they had already wreaked their incendiary vengeance. (Col. Rec., VIII, 534.) In the court records, preserved at Hillsborough, we may today read the significant entry:

"Hillsborough, March Term, 1771.

"The persons who style themselves Regulators and under the conduct of Herman Husbands, James Hunter, Rednap Howell, William Butler, Samuel Devinney and others, broke up the court at September term last, still continuing their riotous meetings and severely threatening the judges, lawyers, and other officers of the court, prevented any of the judges and lawyers attending.

"Therefore the court continues adjourned till September term next 1771."

Admirably expressive of the state of the Colony at this time, and of the pressing need for decisive and strenuous action, is the following vivid picture of the work of the Regulators:

"Their demands and their violence increased at every meeting. Their success produced no reformation. They broke and trampled under foot all the bonds of civilized society, and gave reins to every disordered passion; for vice itself, by repeated acts of violence had changed its name and color. They prevented the Superior Court from sitting in Hillsborough, insulted the judges, and maltreated the inhabitants. Not satisfied with abusing Judge Henderson at court, they burnt his

stables and corn on the 12th of November, and they burnt his dwelling house on the 14th. It was no longer a question whether clerks, registers, or lawyers should be permitted more than legal fees, and sheriffs be compelled to account for all the taxes they had collected. It was now to determine whether civil government should prevail, or every man's property be exposed, without redress, to the avarice or resentment of a lawless mob." (Williamson's History of North Carolina.)

According to the statement of John Ashe in the Assembly of 1769, Thomas Person, formerly sheriff of Granville (1762) and in 1769 member for that county, had frequently been charged with perjury. (Col. Rec., VIII, 118.) On his trial for perjury and extorting illegal fees, at the December (1770) session of the Assembly, Richard Henderson prosecuting, Thomas Person was exonerated of the charges preferred, John Campbell acting as chairman of the investigating committee; and the report of the findings of the committee was ordered to be "printed in The Public Gazette." (Col. Rec., VIII, 448, 449, 461.) Through clever manipulation, at an auspiciously chosen moment in a "very thin house" composed for the nonce almost entirely of adherents of Person who were of avowedly Regulating principles, Henderson, the prosecutor, was ordered by the Assembly to pay the heavy costs of the suit. It was further ordered that if Henderson failed to pay, he was to receive the highest censure the House could inflict upon him. (Col. Rec., VIII, 467-8.) The costs of the suit were 117 pounds.

Such was the malice of the Regulating element—that element which, incited by the violent expressions of Person, himself a notorious Regulator, and others of like temper, visited such cowardly incendiary vengeance upon Henderson. The real attitude of the Assembly of 1770 towards Person, despite the Campbell report, expressive of their thorough-going distrust of him as agitator and Regulator, is expressed in their action, whether intended or actually taken, in expelling him from that body. We read in the anonymous letter, attributed to Rednap Howell, a Regulation leader: "When the house

met their first step was to expel Husband and Parsons (Person) from their seats; Husband they sent to jail; Parsons, home." (Col. Rec., VIII, et seq.) The records unequivocally show that Husband was expelled and incarcerated (Ibid., VIII, 268, 269; 330, 331); but as to Person they are silent.

In writing to Earl Hillsborough on March 11, 1771, Governor Tryon expresses great satisfaction over the session just then concluded, stating that he has been "honorably seconded by the Legislature." The exceptional character of the action of Person's friends in securing the malicious placing of the cost of the suit against Person upon Richard Henderson, furnishes the one striking exception, and becomes the occasion for a notable tribute to Judge Henderson:

"There was, however, one step taken which gave me much concern. It was the resolution passed respecting Mr. Henderson, one of the associate judges. This was done by surprise in a very thin House composed of the friends of a member of the House who stood charged by Mr. Henderson with having perjured himself. I am sensible Mr. Henderson will have a more favorable verdict at the next session, a majority of the members who happened to be absent when this unfair advantage was taken, declaring afterward their disapprobation thereof.

"Mr. Henderson, my Lord, is a man of probity and a firm friend of Government as well from principle as from the duty of his office, and who from his spirited endeavors to preserve the last Hillsborough Court against the insults of the Insurgents, by the malice of his enemies and those of Government, has had his house, stables, four horses and many other effects burned last Winter, sufferings which pleaded for more humanity than he received from representatives of his countrymen." (Col. Rec., VIII, 525.)

As anticipated by the Governor, the malice of Person's adherents was balked at the very next session of the Assembly. On December 19, 1771, it was on motion

"Resolved, That the resolve of the last session of the Assembly held at Newbern on the fifth day of December,

one thousand seven hundred and seventy, directing Richard Henderson, esquire, to pay the expenses of several witnesses who were called to the bar of this House to give evidence against Thomas Person, one of the members thereof, on several charges of perjury and extortion, be rescinded and expunged from the journals of the House. Rd. Caswell, Speaker. J. Green, junr. Clk." (Mss. Collections, N. C. Historical Commissions. Cf. also, Col. Rec., IX, 196.)

Pursuant to this resolution of the Assembly, one of the broader minded men of the day, in the interest of justice and fair play, forwarded a copy of the resolution to the editor of the Newbern *Gazette*, Mr. James Davis, with a request to publish the same—which request was doubtless carried out. Inclosed with a copy of the resolution was the following letter, fully indicative of the saner sentiment of that day:

"Mr. DAVIS:

"At the last session of Assembly held at Newbern, it was resolved, that the Honorable Richard Henderson, esquire, one of the associate judges of this Province, should pay the expenses of certain witnesses, called to the bar of the House to give evidence against Thomas Person, upon charges of perjury and extortion.

"The publication of that resolve, in the Newbern paper, had a designed and necessary tendency to prejudice the reputation of Mr. Henderson, in the opinion of those who concluded the House of Assembly would inflict their censures upon such only as merited them. From a (line missing \* \* \*) upon their journals by an undue influence, exerted to obtain it, and at the time of passing it, many members were absent, who held that proceeding in abhorrence, and would have solemnly protested against it, if they had been present. The Assembly at their present session in a full House, entered into a resolve a true copy of which I (send?) you as a member of the community, disposed to do equal justice, and make the vindication of Mr. Henderson's character as public as was the attempt to asperse it, I beg you will give this last

resolve a place in your paper, and you will oblige many of your readers.

"December 21st, 1771."

(Unpublished Henderson mss.) It is reasonable to suppose that this letter as well as the resolve was published by Mr. Davis in the *Newbern Gazette*.

Richard Henderson was vindicated in the most ample and satisfactory manner. The original resolve, "railroaded through" the Assembly by Person's partisan supporters, was not only rescinded, but ordered "expunged from the journals of the House." The resolve exonerating Henderson was published in the *Newbern Gazette*. The Assembly on December 14, 1773, ordered the costs of the suit against Person to be paid out of the public treasury. Whatever may be said of his later distinguished services, certain it is that Person was so active and so notorious in his leadership of the Regulators as to be included by Governor Tryon in the list of those excepted from the benefit of pardon. Person was captured by the forces of Governor Tryon, carried as a prisoner to Hillsborough, and there confined with the Regulators who were convicted and sentenced to death. Person succeeded in escaping trial and further punishment—according to tradition, through the personal friendship between him and Edmund Fanning, who "had the ear of the Governor." (Col. Rec., VIII, xxvii-xxviii.)

## CHAPTER VI

### ALAMANCE

Meanwhile the Governor, the Council and the Assembly had all come to one conclusion as to the policy it was imperative to pursue. The disturbances in the Colony must be suppressed and the insurgents put down with military force. The report of the committee, submitted on September 10, 1770, and duly adopted, contained the following significant clause:

"The late daring and insolent attack made on the Superior Court at Hillsborough, by the people who call themselves Regulators, we hold in the utmost detestation and abhorrence. The deliberate and preconceived malice with which it was contrived, and the brutal fury with which it was executed, equally bespeak them unawed by the laws of their country, insensible to every moral duty, and wickedly disaffected to government itself. The dissolute principles and licentious spirit by which these people are actuated and stand united, render them too formidable for the ordinary process of law. Sensible of this, sir, we owe it to our sovereign, our constituents, and ourselves, to adopt measures at once spirited and decisive." (Col. Rec., VIII, 312.)

Four days later Samuel Johnston brought in his drastic "Riot Act," which was immediately tabled by a House, the majority of whom were of Regulation principles. The House then appointed a committee to prepare a bill regulating officers' fees. While the House was bending all its energies toward passing reformatory laws, the Regulators themselves precipitated the originally contemplated drastic action. On December 31, news reached the House that a large body of Regulators were assembled with wagons and provisions at Cross Creek (Fayetteville) preparatory to marching on Newbern. Within a week Johnston's "Riot Act" was taken from the table and passed. Various bills, embodying reforms sought by the Regulators, were also passed by the Assembly; but the imprisonment of Husband, against whom "no bill" was

actually found by the special term of the Court of Oyer and Terminer at Newbern on February 2, 1771, the Chief Justice presiding, aroused the Regulators to a renewed outbreak of insurrectionism. They had even gone so far as to assemble in readiness to march upon Newbern to rescue Husband, when the news of his release reached them; whereupon they quietly dispersed. But the terror caused by their embodiment threw the entire province into a panic of dread and the government hurriedly called out the regiments of Dobbs, Johnston, and Wake counties. Another term of court, called by the Governor, met on March 11 at Newbern, at which all the justices were present, and every one of the 62 indictments against the Regulators was returned "a true bill." As all these defendants were adjudged outlaws under the riot law if they did not appear for trial in 60 days, another court was called for two months later, to which all these bills were made returnable.

On March 19, the Governor called for 2,500 volunteers from the various counties of the Colony. Considerable obstacles were encountered in embodying troops to serve, some counties refusing to furnish their quota, others complying with marked reluctance. The cloud of civil war loomed dreadful upon the horizon. After numerous vicissitudes of fortune, Tryon with his forces reached the banks of the Alamance on May 14. Two days later he formed his army, some 1,000 men and officers, in line, and marched to meet the enemy, assembled to the number of some 2,000, about five miles further on. There is no incident in North Carolina history which so fitfully glows with pedestrian heroism and pathetic inefficiency. In response to the representations of Doctor Caldwell, who interviewed the Governor, and a petition from the Regulators, presumably transmitted by Caldwell, Tryon refused to make any concession, standing firm upon the condition that the people should submit to government, and disperse at a designated hour.

No true realization of the impending tragic conflict seems to have been felt by the Regulators. Engaged in wrestling matches among themselves, as if upon a holiday, they were



suddenly aroused to a sense of danger when an old soldier in their midst warned them to look out for a volley. It was what they might have expected, for when Tryon refused to make any concession after being petitioned a second time, for a redress of grievances, they told the messenger to go back and tell Billy Tryon they defied him, and that a fight was all they wanted. Finally Tryon sent them his ultimatum: that unless they dispersed at once, they would be fired upon. "Fire! and be damned!" was the defiant reply. Upon receiving this message, the Governor ordered his troops to fire. At first the troops failed to comply; whereupon Tryon, who was riding upon a white charger, rose in his stirrups and cried: "Fire! Fire on them or on me!" A volley rang out, and the tragic conflict was on.

From behind trees, fences and rocks the Regulators at first poured in a withering fire upon Tryon's forces. The artillery of the Governor's troops did much execution among the Regulators; but these, led by Captain Montgomery, made a desperate attack upon the guns, which they finally captured, after routing the gunners. The Regulators soon found themselves unable to work the guns, and lacking support from their main body, gave way before the attack of the Governor's forces and abandoned the guns. After two hours of fighting, the Regulators abandoned the field, having lost nine men killed and a great many wounded. Of the 15 men who were captured, one, James Few, was summarily executed upon the field of battle, he having been under ban for outlawry. Given the alternative of taking the oath or being hanged, Few firmly refused to take the oath, though twice urged to do so by the Governor, who wished to spare his life. It is clear that his execution, though needlessly summary, was inevitable, sooner or later. It was ordered at the time to quiet the dissatisfaction among Tryon's soldiers, who threatened to go no further unless some of the insurgents were summarily dealt with.

On the day following the battle, the Governor pardoned by proclamation all those who would submit themselves to government and take the oath of allegiance, specific exception

being made of those who had already been captured and those who had recently been outlawed. Tryon received hearty approbation for his conduct from the British Government, which also directed him to tender publicly the King's thanks to the troops for their loyal conduct during the campaign.

Joined on its march westward on June 4 by General Waddell's column, which had not been present at the battle, the united forces finally entered Hillsborough on June 14. Several courts martial for the trial of prisoners had been held while the troops were on the march, and also at Hillsborough, as late as June 18. From June 14 to June 18, an especial Court of Oyer and Terminer, consisting of the Chief Justice and his two associates, Moore and Henderson, sat in trial of the prisoners, 12 of whom were convicted of treason and two acquitted. Six were executed on June 19, the remaining six being reprieved by the Governor at the solicitation of the officers of the army. (Col. Rec., VIII, 650.) During Tryon's absence, the six reprieved prisoners, "by some strange irregularity," were set at liberty, and were never afterwards brought to justice. It is important to state in vindication of the reputation of the court which tried these prisoners, that the judges were just in their decision, and lenient in their recommendation. The Governor desired to make a bloody example of the captured Regulators, and doubtless would gladly have seen all 14 executed. It was only at the solicitation of the officers of the Army that six of the 12 Regulators condemned to death escaped with their lives. Tryon sought to intimidate the court itself, and to force it to do his bidding, rather than to administer justice. Nothing more clearly demonstrates the probity and firmness of the court in the impartial administration of justice, adherence to due process of law, and their defiance of the threats of the Governor to depose them if they did not obey his orders, than the following passage from the famous "Atticus Letter," addressed to Tryon after he became Governor of New York, and said to have been written by Maurice Moore, one of the justices of the court:

"Never were criminals more entitled to every lenity the

law could afford them; but, sir, no consideration could abate your zeal in a cause you had transferred from yourself to your sovereign. You shamefully exerted every influence of your character against the lives of these people. As soon as you were told that an indulgence of one day had been granted to two men to send for witnesses, who actually established their innocence, and saved their lives, you sent an aide-de-camp to the judges and attorney general, to acquaint them that you were dissatisfied with the inactivity of their conduct, and threatened to represent them unfavorably in England if they did not proceed with more spirit and dispatch. Had the court submitted to influence, all testimony on the part of prisoners would have been excluded; they must have been condemned to a man. You said that your solicitude for the condemnation of these people arose from your desire of manifesting the lenity of government in their pardon. How have your actions contradicted your words! Out of twelve that were condemned, the lives of six only were spared." (Col. Rec., VIII, 718-727. In *Virginia Gazette*, Nov. 7, 1771.)

The relentless Tryon was succeeded as Governor by Josiah Martin, who found, on taking office, that the insurrection was now completely stamped out. In reply to the Governor's request as to whether the outlaws could be tried under the riot act, already explained, the Superior Court justices, individually, filed opinions, the consensus of which was that the defendants could not be treated as outlaws under the above act, but that they could be tried under any other law, such as the law of treason. (Col. Rec., IX, 333-339.)

In response to Martin's letter, laying the matter before the home government, Lord Hillsborough replied that the King authorized the Provincial Assembly to pass an act of grace, pending His Majesty's decision. The provincial upper house rejected this act; but at the beginning of the Revolution, the King, as a matter of policy, issued through the Governor a proclamation of pardon for all who had been concerned in the Regulation, with the single exception of Husband. (Col. Rec., X, 90 and 405.)

The most accurate and concise statement of the Regulation troubles, their causes and violences, is contained in Governor Martin's letter to Lord Dartmouth of November 28, 1772, following a tour through the back counties, and personal discussion of the recent insurrectionism with people of all classes. He gave it as his matured conviction, a conviction which must appeal to all who have studied in detail this phase of our early history—that the people had been “grievously oppressed by the sheriffs, clerks and the subordinate officers of government, and exceedingly moved my compassion; but on the other hand, I can assure your lordship there was not wanting evidence of the most extravagant licentiousness and criminal violence on the part of these wretched people, which (being) provoked by the abuse I discovered, or by other causes that might be inscrutable to me, seems at length to have urged matters to a crisis that necessarily terminated in bloodshed. Upon the whole, I am not without hopes, my Lord, that the vigorous measures taken by my predecessors under those circumstances may have a tendency to keep under the disorderly spirit.” (Col. Rec., IX, 357-358. Also *ibid.*, IX, 330.)

## CHAPTER VII

### THE INAUGURATION OF WESTERN EXPANSION

The influence of the War of the Regulation upon the movement of westward expansion has never been accurately traced by historians. Just as the Scotch Highlanders, who had been forced to take the oath of allegiance to the British crown after the bloody disaster at Culloden, kept the faith and were Tory virtually to a man in North Carolina during the Revolution; so the Regulators who remained in North Carolina kept their faith and became consistent Tories, largely in consequence of the oath of allegiance they took to the British crown after Alamance. But there was another element of the Regulators, who represented the true American spirit—men of the stamp of Daniel Boone and James and Charles Robertson, who constituted the vanguard of the army of westward expansion. These true Americans, distraught by apparently irremediable injustices, even before Alamance had plunged fearlessly into the wilderness, seeking beyond the mountains a new birth of liberty, lands of their own selection free of cost or quit rents, and a government of their own choosing and own control. Indeed the feverish movements of the people, stimulated by the thousands of pioneers who were annually entering North Carolina or passing through toward the beckoning Southwest, had set in motion a wave of migration across the mountains as early as 1769. But after the battle of Alamance, the liberty-loving men of Regulating instincts swept in a great tide into the northeastern region of Tennessee. Somewhat later, many of these eagerly followed Henderson and Boone in organizing the Colony of Transylvania. "They played a glorious part," says the historian Bancroft, "in taking possession of the Mississippi Valley, towards which they were carried irresistibly by their love of independence. It is a mistake if any have supposed that the Regulators were cowed down by their defeat at the Alamance. Like the mammoth, they shook the bolt from their brow and crossed the mountains."

The proclamation of George IV in 1763, forbidding the eastern colonists to settle on lands to the west of a line join-

ing the head-springs of the rivers flowing into the Atlantic, was one of the shaping causes in awakening the resistance of the American people to the narrow-visioned, blundering governmental policies of Great Britain. In their steady propulsion westward of the frontier line and their progressive, irresistible settlement of lands from which they were impotently debarred by royal proclamation, the colonists quietly flouted the authority claimed and exercised by the English sovereign. By virtue of her hazy charter, claiming "from sea to sea," Virginia laid claim to almost the entire interior of the continent. This vast territory beckoned to prospective settlers; and North Carolina, under the terms of her charter, laid claim to an extensive western area. The time was ripe for a great leader, far-sighted, aggressive, prudent—a territorial expansionist who might prepare the ground for a great westward migration of the people and the establishment of a permanent settlement in the heart of the transmontane wilderness.

George Washington expressed the secret belief of the period when he hazarded the judgment that the Royal Proclamation of 1763 was a mere temporary expedient to quiet the minds of the Indians, and was not intended as a permanent bar to westward expansion. Some years earlier, Richard Henderson, with the continental vision of Washington, had come to the conclusion that the uncharted West offered unlimited possibilities in the shape of reward to pioneering spirits, with a genuine constructive policy, willing to venture their all in vindication of their faith. George Washington, acquiring vast tracts of western land by secret purchase, indirectly stimulated the powerful army that was carrying the broad-axe westward; Richard Henderson, with a large-visioned, constructive policy of public promotion, colonization and settlement of the virgin West, directly conferred large benefits upon the nation by his resolution and aggressiveness. Washington and Henderson were factors of crucial importance in the settlement of the West and the advance of the pioneer army into the wilderness of Tennessee, Kentucky, and Ohio.

## CHAPTER VIII

### AN EARLY LAND COMPANY

During the early days of his legal practice in Salisbury, Richard Henderson formed the acquaintance of Daniel Boone, a young hunter and scout with only a local notoriety, who lived a few miles away and frequently attended the terms of court. Col. John Williams, of Granville, Henderson's law-partner, and Col. Thomas Hart, sheriff of Orange county, also knew Boone who, though very poor, impressed these men with his sterling virtues of trustworthiness and integrity. From Boone, who had traveled into the Holston region as early as 1760, these three men learned of the beauty and fertility of the Western lands, and were thrilled with the glowing accounts which Boone gave of his wanderings as hunter and explorer. Accordingly, they agreed among themselves to engage Boone to spy out the land for them, and to report to them on his return. As early as 1764, Boone was spying out the Western lands as the agent of Richard Henderson, and inquiring of the "Long Hunters," who had penetrated further to the westward than himself, as to the "locography and geography of the country."

It may be that Henderson was retarded in his plans by the Royal Proclamation of 1763; it may be that his plan for securing title to vast tracts of Western lands was not yet matured. Whatever the cause certain it is that no move was made by him until the after the treaty of Fort Stanwix in 1768. According to this treaty, Great Britain acquired by purchase from the Six Nations their unwarranted claim to all the territory east and southeast of the Ohio and north of the Tennessee rivers—a vast region including Kentucky and immense portions of Tennessee and West Virginia. This treaty acted as a great stimulant to Western colonization and Henderson realized that another decade would mark an epoch in the history of American civilization. At the same time, everyone in North Carolina realized the absurdity of the claim



**COLONEL RICHARD HENDERSON**

President of the Colony of  
Transylvania







of the Northern tribes to the Kentucky area—for it had been claimed from time immemorial by the Southern Indians, the Cherokees, the aboriginal occupants of what is now Tennessee.

Richard Henderson immediately understood the significance of the Treaty of Fort Stanwix, since it extinguished the claim of the Northern tribes to the Kentucky area. The valid ownership of the territory being actually vested in the Cherokees, Henderson foresaw that the lands could be acquired only by lease or by purchase from that tribe. Although Boone had once actually penetrated the wilderness of Kentucky on its northeast corner, he was unaware of it; and he was as eager to explore the fabled region as was Henderson to have him do so. His old companion in Braddock's campaign, John Findlay, now happened into the valley of the Yadkin and told Boone that he believed he could guide him across the mountains to Kentucky which he had visited on a trading expedition some years previous.

Boone doubtless held his last conference before starting West with Judge Henderson at Salisbury, where he was presiding over the Superior Court; and plans were soon outlined for Boone's journey of exploration. At this time Boone was very poor and in debt to the law firm of Williams and Henderson. His desire to pay off his indebtedness to Henderson made him all the more ready to undertake the exhaustive tour of exploration in company with Findlay and others.

In his autobiographical account, Boone has described the details of his two years' sojourn in Kentucky, part of the time hunting on his own account, part of the time prospecting and seeking out suitable sites for settlement, colonization and defence, in the interest of Henderson and his associates. In his description of the richness, beauty and fertility of the country, in which he is supported by contemporary annalists, such as Felix Walker, Thomas Hanson, and Nathaniel Henderson, Boone expresses himself (through the mouth of the bombastic Filson) in glowing terms:

"Nature was here a series of wonders and a fund of delight. Here she displayed her ingenuity and industry in a

variety of flowers and fruits, beautifully colored, elegantly shaped and charmingly flavored; and we were diverted with innumerable animals presenting themselves perpetually to our view." On his return in 1771, from his remarkable journey beyond the Cumberland, he was immediately engaged by Henderson to act as his secret and trusted ambassador to treat with the Cherokee Indians for the purchase of this imperial domain. The project upon which Henderson now embarked was the first great movement of westward expansion, a movement which "for timeliness, heroism and ultimate success is without a parallel in our annals." This enterprise, said Governor Morehead, of Kentucky, in 1840, "in point of magnitude and peril, as well as constancy and heroism displayed in its execution has never been paralleled in the history of America."

At the time of Boone's return to North Carolina, Judge Henderson was embroiled in the exciting issues of the Regulation. His plan to inaugurate his great Western venture was thus temporarily frustrated; but the dissolution of the Superior Court, under the "Judiciary Act of 1767," took place in 1773. Richard Henderson was now left free to devote himself unreservedly to the monumental project towards which the investigations of years had led. From this time forward, Richard Henderson sheds the glamor of local fame and enters into national history as one of the remarkable figures and notable constructive pioneers in the early history of the American people.

In the meantime, Daniel Boone grew impatient over the delay; for he was eager to carry his family with him into the heart of the Western wilderness. Ignoring the crucial question of title and heedlessly disregarding the inconceivable dangers of encroaching upon the territory of hostile Indians, Boone recruited a body of settlers, and on September 25, 1773, started from the Yadkin Valley in North Carolina for Kentucky with a colony numbering eighteen men, besides women and children. Unsuspicious of danger, a detachment of Boone's force was attacked by a band of Indians, and seven of them,

including Boone's own son, were killed. They were now joined by a party of forty fellow emigrants from the Valley of Virginia and Powell's Valley; and Boone was anxious to proceed. But the others demurred; and despite Boone's expostulations, the whole party scattered and returned to the settlements. This incident is significant evidence that Boone was deficient in executive ability, the power to originate and execute schemes of colonization on a large scale. A marvelous scout, a skilled hunter, a backwoodsman without a peer, a man of rare balance and sagacity of judgment, Boone lacked constructive leadership and executive genius. He was a perfect instrument for executing the designs of others. It was not until the creative and executive brain of Richard Henderson was applied to the vast and daring project of Western colonization that it was carried through to a successful termination.

In 1774 Henderson organized on a more extensive footing under the name of the Louisa Company, the land company first known as Richard Henderson and Company which seems to have been originally composed of Col. John Williams, Col. Thomas Hart, and himself. The name of the Louisa Company was quickly changed to Transylvania Company; and the purpose of the organization was to make a purchase of lands and to effect a settlement thereon, on a basis of peace and legal right, contrary to the misguided plan of Boone, who boldly intended to fight his way into possession of territory to which he had no legal claim. The ownership of all the Kentucky region, with the exception of the extreme northeastern section, remained vested in the tribe of Cherokee Indians. Their title to the territory had been acknowledged by Great Britain through her Southern Agent of Indian Affairs, John Stuart, at the Treaty of Lochaber in 1770. Henderson was now confronted with a two-fold task: first, to secure an indisputable title from the Indian owners; and second, to surmount the far more serious obstacle of royal edict against the purchase of land from the Indians by private individuals without a crown grant. Through the highest English legal

authorities Henderson learned that according to the most recent legal decision rendered in England on the subject, purchases by individuals from Indian owners were legally valid. Without royal grant, Patrick Henry in Virginia, in 1774, was negotiating for the purchase of part of the very territory Henderson desired. Two years earlier the Watauga settlers leased from the Cherokees the lands upon which they resided—a preliminary to subsequent purchase.

Had Richard Henderson made his purchase from the Cherokees without taking further steps to assure himself as to the legality of his actions, he would doubtless have been justified by the popular sentiment of the day, in view of the universal disregard of the Royal Proclamation of 1763. But having served on the highest court of law in the Colony of North Carolina, he was determined to secure the highest legal opinion of Great Britain. The opinion handed down by the Lord Chancellor and the Attorney General cleared away the legal difficulties; and Henderson next inaugurated active steps toward arranging a treaty with the Cherokee Indians. Daniel Boone had just returned from the campaign of General Andrew Lewis against the allied Indian tribes, resulting in a victory for the white men over the red men at the battle of the Great Kanawha, on October 10, 1774. This victory put a stop to Dunmore's War, assured peace with the Indians for the succeeding year, and greatly reduced the dangers incident to colonization of the Kentucky wilderness.

Richard Henderson associated with himself in the great enterprise eight gentlemen of probity and distinction, either his relatives, connections, friends, or emigrants to North Carolina from his boyhood home in Hanover county, Virginia. The partners in the Transylvania Company were the three brothers, Nathaniel, David and Thomas Hart, especially noted for their connections and associations with Henry Clay and Thomas Hart Benton; James Hogg, of the family of the "Ettrick Shepherd," a prosperous merchant and eminent citizen; and William Johnston, the chief of the Scotch merchants of his section, an emigrant from Scotland, of distinguished

connections—all residing in the county of Orange; John Luttrell, a native of Westmoreland County, Virginia, who was afterwards swept into the Revolution and killed in battle; John Williams, the distinguished lawyer, Leonard Henley Bullock, former high sheriff, and Richard Henderson, as president and legal adviser—all three residing in the adjacent county of Granville. This group of strong men and representative citizens gave stability and driving force to the momentous undertaking upon which they were now embarked.

In the autumn of 1774, Colonel Richard Henderson, accompanied by Captain Nathaniel Hart and a guide, journeyed to the Otari towns of the Overhill Cherokee Indians to open negotiations for the purchase of territory. The Indian chiefs expressed a willingness to treat with Henderson; and as a precautionary measure, Atta-kulla-kulla, or "The Little Carpenter," the most celebrated and influential Indian among all the tribes then known, a young Indian man and an Indian woman, accompanied Henderson and Hart on their return home in November, in order to see and examine the goods offered as the consideration. Greatly to Henderson's satisfaction, these goods met with the entire approval of the Indians. The goods for which 10,000 pounds sterling was paid, were purchased at Cross Creek (Fayetteville, N. C.) on December 6, 1774, and soon afterwards sent forward in wagons to the Watauga settlement.

## CHAPTER IX

### THE GREAT TREATY AND THE WILDERNESS ROAD

It is interesting to note that just prior to the public announcement throughout the Colony of this vast scheme of promotion and colonization, Dr. J. F. D. Smyth, the British emissary, met Richard Henderson at the home of Col. John Williams. Although Smyth in his travels as British scout had seen the greatest men in the American Colonies, he pronounces Richard Henderson "one of the most singular and extraordinary persons and excentric geniuses in America, and perhaps in the world." When on Christmas Day, 1774, there were spread broadcast throughout the Colony of North Carolina "Proposals for the encouragement of settling the lands purchased by Messrs. Richard Henderson & Co. on the branches of the Mississippi River from the Cherokee tribe of Indians," a genuine sensation was created. In a letter to Andrew Miller (January 28, 1775), Archibald Neilson, deputy auditor of the Colony, inquired anxiously, and apparently not without reason: "Pray is Dick Henderson out of his head?" As it happened, Dick Henderson was never more coolly in possession of his head than now; nor had he ever hitherto put it to uses of such momentous promise. Though trembling in fear of the coming revolutionary cataclysm, Governor Josiah Martin thundered forth in a forcible-feeble proclamation against "Richard Henderson and his confederates," in their "daring, unjust and unwarrantable proceeding." In letters to the Earl of Dartmouth, Martin speaks scathingly of "Henderson, the famous invader" and of "the infamous Henderson and his associates" whom he dubs "an infamous company of land Pyrates." He denounced their project as a "lawless undertaking" and "an infraction of the royal prerogative," and threatened the company, if it persisted in its course, "with the pain of His Majesty's displeasure and the most rigorous penalties of the law."

To these fulminations of the royal governors, Henderson

and his associates paid no heed. Daniel Boone was despatched to summon the tribe of Cherokee Indians to the Sycamore Shoals of the Watauga (near present Elizabethton, Tennessee) for a treaty. Some twelve hundred Indians, men, women and children, virtually the entire tribe, assembled at the treaty ground. From the 14th to the 17th of March, in a fair and open treaty, Colonel Richard Henderson in behalf of the Transylvania Company purchased from the Cherokee Indians upwards of twenty million acres, comprising portions of the present States of Virginia and Tennessee, and almost all of the present State of Kentucky.

News of the proposed treaty quickly reached young Isaac Shelby at Fort Blair; and his pioneering instinct unerringly drew him to the focus of interest, the treaty ground. We are fortunate in having handed down to us a description of the treaty on the part of young Isaac Shelby, an eye-witness. It was proved, by the investigation conducted at the instance of the State of Virginia, that the treaty was conducted "with an honesty unparalleled in that day in such matters." From the deposition of Isaac Shelby (December 3, 1777), the following is deserving of quotation here:—

"That in March, 1775, this Deponent was present at a Treaty held at Wattaugha between the said Henderson and the Cherokee Indians: that the deponent then heard the said Henderson call the Indians, where the deed by which the said Henderson now claims was going to be signed, and declared that they would attend to what was going to be done: that the deponent believes the courses in the said Deed contained, to be the very courses which the said Henderson read therefrom to the Indians and were interpreted to them. That the said Henderson took the said Deed from among several others lying on a table, all of which appeared to the Deponent to be of the same tenor with that which he read."

It was doubtless at some time during the course of the treaty that Judge Henderson, attracted by the sterling qualities of young Shelby and by his manifest eagerness to connect himself with Henderson's plan of colonization, se-



cured the promise of his services in the future, following the expiration of his term of enlistment, to act as surveyor in Kentucky for the Transylvania Company.

Once Richard Henderson had secured formal possession of this vast territory for the Transylvania Company, he immediately took active steps toward securing actual possession. As a preliminary step and even while the negotiations were still in progress, he commissioned Boone to mark out a road from the established settlements westward to the new possessions. The company of road builders, some 30 in number, placed themselves "under the management of Colonel Boone, who was to be our pilot and conductor through the wilderness to the promised land." So says Felix Walker, of Rutherford County, N. C., one of the party. About 10 days later Richard Henderson with some 30 men, set off from the treaty ground over the path which Boone and his axemen had cut out. Henderson had no intention of acting as a mere financial promoter of the enterprise of settling the wilderness. He was of the stuff that empire builders are made. The trials and vicissitudes of the journey, for both the parties under Henderson and Boone respectively, were arduous in the extreme. The forests bristled with Indians, numerous settlers were fleeing from the wilderness in dread of Indian forays, and it was supremely difficult to hold the men in line. Again and again the fate of the expedition hung in the balance. It was the courage and energy of Henderson, ever the man of action, and his unswerving resolve to go forward in the face of all named and unnamed dangers which carried through the armed "trek" to a victorious conclusion.

As they were encamped near the site of the future Boonesborough, Boone and his party were attacked by Indians. On April 1, Boone despatched a letter to Henderson, which expresses the complete confidence which the backwoodsman felt in the leadership of Henderson. It is one of the greatest contemporary tributes to Henderson and the company which he was leading.

"DEAR COLONEL:

"After my compliments to you, I shall acquaint you with our misfortune. On March 25 a party of Indians fired on my company about half an hour before day, and killed Mr. Twitty and his negro, and wounded Mr. Walker very deeply, but I hope he will recover. On March 28, as we were hunting for provisions, we found Samuel Pate's son, who gave us an account that the Indians fired on their camp on the 27th day.

"My brother and I went down and found two men killed and sculped, Thomas McDowell and Jeremiah McPheeters. I have sent a man down to all the lower companies in order to gather them all to the mouth of Otter Creek.

"My advice to you, sir, is to come or send as soon as possible. Your company is desired greatly, for the people are very uneasy; but are willing to stay and venture their lives with you, and now is the time to flusterate their (the Indians') intentions, and keep the country, whilst we are in it.

"If we give away to them now it will ever be the case. This day we start from the battleground, for the mouth of Otter Creek, where we shall immediately erect a fort, which will be done before you can come or send—then we can send the men to meet you, if you send for them.

"DANIEL BOONE.

"We stood on the ground and guarded our baggage till day, and lost nothing. We have about 15 miles to Cantuck (the Kentucky River) at Otter Creek.

"D. B."

The incidents of this historic march are well authenticated; the details I have embodied in the work of which this and subsequent instalments are but fragmentary outlines. One of the most important of western historical documents is the autograph diary of Richard Henderson, lent to the historian Mann Butler by Richard's brother, Pleasant.

There is the simplicity of tense reality in the following entry in Henderson's diary:—

"About 11 o'clock received a letter from Mr. Luttrell's camp that there were five persons killed on the road to the Cantuckee by Indians. Captain Hart, upon the receipt of this news, retreated back with his company and determined to settle in the valley to make corn for the Cantucky people. The same day (Friday, April 7) received a letter from Dan Boone, that his company was fired upon by the Indians (who) killed two of his men, though he kept the ground and saved the baggage."

This intelligence spread consternation and even terror into the hearts of strong men, and caused some to turn back. Abraham's Lincoln's grandfather, who was with Henderson's party, was afraid to advance. But Richard Henderson was made of sterner stuff. Without hesitation he commanded a forward march. The settlement of the West rested upon the shoulders of Henderson, and he quavered not under that momentous burden. Nor did it tend to allay the fears of his followers or to diminish their apprehension to meet, day after day, parties of panic-stricken fugitives which, in the aggregate, totaled more than twice the number in his little band.

Henderson's diary is laconically, simply eloquent of his determination to go forward. The day after the receipt of the letter from Boone (April 8), there is the following significant entry:—

"Started about 10 o'clock. Crossed Cumberland Gap about four miles. Met about 40 persons returning from the Cantucky on account of the late murders by the Indians. Could prevail on only one to return."

There are few if any more memorable pictures in all of western history than this: Richard Henderson, a man a little above average height, broad of shoulders but not fleshy, clad in the rough garb of the pioneer, standing firmly planted in the "Wilderness Trail" on a ragged spur of the grey-grained Cumberlands, pointing significantly forward to the "dark and bloody ground," and pleading ineffectually with the pale and disheartened fugitives to turn about and join the dangers and

vicissitudes of pioneer conquest. For this indeed was the destined mission of Henderson's remarkable career, to stand firm and to give bold leadership to that momentous, crucial movement in behalf of permanent western colonization.

After various trials and vicissitudes, the founder of Kentucky, with his little band, at least reached the destined goal of their arduous journeyings. Henderson's record on his birthday runs: "Thursday the 20th (April) Arrived at Fort Boone on the Mouth of Oter Creek Cantuckey River where we were Saluted by a running fire of about 25 Guns; all that was then at Fort. . . . The men appeared in high spirits & much rejoiced in our arrival." It is a coincidence of historic interest that just one day after the embattled farmers at Lexington "fired the shots heard round the world," the echoing shots of Boone and his sturdy backwoodsmen rang out to announce the arrival of the Proprietor of Transylvania and the birth of the American West.

## CHAPTER X

### TRANSYLVANIA

Soon after his arrival at Fort Boone, Judge Henderson busied himself with having erected, according to plans of his own, a large stockaded fort. His greatest concern was to unite the people for the purpose of establishing an independent government. "Our plan of legislation," he says in his diary (May 8, 1775), "the evils pointed out . . . the remedies to be applied &c &c &c were Acceded to without Hesitation. The plann was plain & Simple . . . 'twas nothing novel in its essence—a thousand years ago it was in use, and found by every Year's experience to be unexceptionable. We were in four distinct settlem<sup>ts</sup>. Members or delegates from every place by free choice of Individuals they first having entered into writings solemnly binding themselves to obey and carry into Execution Such Laws as representatives should from time to time make, Concurred with, by A Majority of the Proprietors present in the Country." On May 23, 1775, the pioneers from the various small settlements and camps nearby assembled on the green under a mighty plane tree at Boonesborough.

In his address opening the assembly, Judge Henderson used these memorable words:—

"You are about a work of the utmost importance to the well-being of this country in general, in which the interest and security of every and each individual are inseparably connected.

"You, perhaps, are . . . placing the first corner stone of an edifice (which) can only become great in proportion to the excellence of its foundation. . . . If any doubt remain amongst you with respect to the force or efficiency of whatever laws you now, or hereafter make, be pleased to consider that *all power is originally in the people: make it their interest, therefore, by impartial and beneficent laws, and you may be sure of their inclination to see them enforced.*"

The government which was established here was probably the most unique colonial government ever set up on this continent. The proprietary form of government, greatly democratised, was adopted by the pioneers under Henderson's guidance. From one who, though still nominally under royal rule, vehemently asserts that the source of all political power is the people, and that "laws derive force and efficiency from our mutual consent," western democracy thus born in the wilderness was "taking its first political lesson."

A land office was formally opened, deeds issued, and a store established which supplied the colonists with powder, lead, salt, osnaburgs, blankets, and the chief necessities of pioneer existence. Here was a marvellous country that was actually being occupied permanently by patriotic Americans. And people nowadays can scarcely realize the delight, and well-nigh rapture, of the pioneers in the wonderful country they were colonizing. "To enter upon a detail of the Beauty & Goodness of our Country," writes Nathaniel Henderson to a friend, "would be a task too arduous. . . . Let it suffice to tell you it far exceeds any country I ever saw or heard of. I am conscious its out of the power of any man to make you clearly sensible of the great Beauty and Richness of Kentucky." Writing to his brother Jonathan from Leestown, the young George Rogers Clark, soon to plot the downfall of Transylvania, enthusiastically says (July 6, 1775): "A richer and more Beautiful County than this I believe has never been seen in America yet."

It is a memorable feature of the career of the young Isaac Shelby, later to become the first governor of Kentucky, that he devoted a year of his life to scouring the wilds of Kentucky and surveying tracts of land for the pioneers who settled under the auspices of the Transylvania Company. The garrison of Fort Blair, where Shelby was located, was not disbanded until July, 1775; and immediately thereafter he journeyed to Kentucky and engaged in the business of land surveying for the proprietors of the Transylvania Company. He surveyed numerous tracts of land for others, and also made a

number of entries of land for himself in Judge Henderson's land office. Two years later, when testifying before the Virginia legislative committee, Shelby said: "This Deponent has made several Entries for lands in Mr. Henderson's Office, but does not conceive himself to be in any manner interested in the Event of the dispute, between the Commonwealth of Virginia and the said Henderson." After nearly a year's service as surveyor, Shelby's health finally became impaired, owing to continued exposure to wet and cold, combined with the frequent necessity for going without either bread or salt. On this account he was compelled to return to the settlements on Holston.

Judge Henderson cherished the hope of having Transylvania received by the Continental Congress as the fourteenth American colony. At Oxford, in Granville County, North Carolina, on September 25, 1775, the proprietors of Transylvania held a meeting and elected James Hogg as a delegate, armed with an ably prepared memorial, to the Continental Congress then in session at Philadelphia, petitioning for the recognition of Transylvania as the fourteenth member of the united colonies. The memorial reads in part as follows:

"Having their hearts warmed with the same noble spirit that animates the United Colonies, and moved with indignation at the late ministerial and parliamentary usurpation, it is the wish of the Proprietors of Transylvania to be considered by the Parliaments as brethren, engaged in the same great cause of liberty and mankind. . . . The memorialists please themselves that the United Colonists will take the infant colony of Transylvania into their protection; and they in return, will do everything in their power, and give such assistance in the general cause of America as the Congress shall judge to be suitable to their abilities."

In their conversations with James Hogg, the Adamses, Samuel and John, displayed keen interest in the affairs of the wilderness colony; but voiced strong objection to certain of its features. Jefferson advised the Virginia delegates to use their charter, not to destroy the claims of the Transylvania

Company, but "to prevent any arbitrary or oppressive government to be established within the boundaries of it." To Hogg, Jefferson stated that "it was his wish to see a free government established at the back of theirs [Virginia's] properly united with them." He would not consent, however, for Congress to acknowledge the Colony of Transylvania until it had been acknowledged by Virginia. Opposition was expressed to the proprietary form of government, quit-rents were regarded as a form of vassalage, and the hope was generally expressed that the proprietors would establish a "free government" and, as Hogg quotes, "render ourselves immortal."

James Hogg's embassy to Philadelphia was barren of results; and this failure marked the beginning of the end of the Colony of Transylvania. Henderson was defeated principally through the opposition of two men: Patrick Henry, who always sought to extend in all directions the power and bounds of the "Ancient Dominion" of Virginia; and George Rogers Clark, who represented Harrodsburg, the rival settlement to Boonesborough in Kentucky, and as a Virginian wished to see Transylvania legislated into a dependency of Virginia.

The mantle of leadership in the West, thitherto worn by Henderson as colonizer and law giver, now fell upon the shoulders of Clark, who forced upon Virginia his own appointment as virtual military dictator of the trans-Alleghany region. Under the pressure of Henderson's vigorous representations, Virginia finally acknowledged the validity of the claims of the Transylvania Company as against the Cherokee Indians, but frankly confiscated the purchase and made of Transylvania a county of Virginia. In consideration of the very great expense incurred by Richard Henderson and Company in purchasing and settling the said lands, "by which the Commonwealth is likely to receive great advantage, by increasing its inhabitants and establishing a barrier against the Indians," Virginia granted to Richard Henderson and Company two hundred thousand acres of land situated between the Ohio and Green rivers, opposite the present site of Evans-



ville, Indiana. North Carolina later granted to the company a like amount on Powell and Clinch rivers in Tennessee. As just compensation, these grants were inadequate to measure the value of the service in behalf of permanent western colonization rendered by the Transylvania Company.

At its own expense, the Transylvania Company had successfully colonized the Kentucky area with between two and three hundred men. With true revolutionary ardor, the proprietors successfully defied the royal authority as expressed through the crown governors of North Carolina and Virginia. Although Henderson and his associates failed to secure recognition of Transylvania as the fourteenth American colony, they furnished to the world, as Hulbert says, "one of the most heroic displays of that typical American spirit of comprehensive aggrandizement of which so much is heard to-day." Unquestionably the strenuous borderers, with their roving instincts, would in any event ultimately have established impregnable strongholds in the Kentucky area. But had it not been for the Transylvania Company and Daniel Boone, no secure stronghold, to protect the whites against the savages, might have been established and fortified as early as 1775. In that event the American colonies, convulsed in a titanic struggle, might well have seen Kentucky overrun by savage hordes, led by English officers, throughout the Revolution. In consequence, the American colonies at the close of the Revolution would probably have been compelled to leave in British hands the vast and fertile regions beyond the Alleghanies.

## CHAPTER XI

### THE AFTERMATH OF THE REVOLUTION

The early history of Kentucky and the struggles made to secure statehood for the trans-Alleghany region constitute a story closely associated with the careers of Richard Henderson and Isaac Shelby. Henderson conceived the idea of making Transylvania the fourteenth American colony, engaging Daniel Boone as his principal scout in traversing the Kentucky region, and Isaac Shelby as a leading surveyor in surveying the land. The actual advance into Kentucky in 1775, headed by Henderson with Boone as advance guard, was made possible by the defeat of the Indians at the Battle of the Great Kanawha in 1774, in which Isaac Shelby played a prominent part. After Kentucky was settled in 1775 and 1776, Henderson turned his activities toward Tennessee and the settlement of the Cumberland region and Shelby threw himself actively into the struggle for American independence.

Elsewhere the present writer has told the stories of these two men in reference to those events.\* The purpose of the remainder of the present work is to describe the difficult rôle played by Isaac Shelby in the early history of Kentucky subsequent to the close of the Revolution. No just, adequate or detailed account has ever hitherto been given of the later career of Isaac Shelby—a career intimately associated with the earlier decades of the history of Kentucky following the conclusion of peace with Great Britain in 1783.

At the close of the war, Isaac Shelby and his wife took up their abode on the first settlement and preëmption granted in Kentucky. For the next decade he devoted himself to making a livelihood by the cultivation of the soil, to which he had been bred in early life. Says the Hon. W. T. Barry, in his obituary address on Isaac Shelby: "He proved to be one of the best practical farmers in our country—by industry and

\* *Richard Henderson: the Authorship of the Cumberland Compact and the Founding of Nashville*, in the "Tennessee Historical Magazine," September, 1916; and *Isaac Shelby: Revolutionary Patriot and Border Hero*, Parts I and II, in the "North Carolina Booklet," January, 1917, and July, 1918.

judicious management his fortune was rapidly augmented. He was content to repose on the laurels he had won in the war of independence. His talents, his services and high reputation, gave him just claims to preferment. The people, too, eagerly solicited his services; but he could never be induced to enter upon public life, unless the exigencies of his country rendered his services indispensable. . . . Like Cincinnatus, he remained unambitious at his farm, enforcing, by his example, the duties of private life; teaching industry, temperance, and economy; extending acts of benevolence and humanity to his countrymen, and setting an example to affectionate husbands, kind parents, and humane masters."

The period from the close of the Revolution until 1792, in Kentucky, covers the struggles, oft-repeated, to secure the benefits of statehood. Ten separate conventions were held in close succession before Kentucky was finally admitted into the Union of States on June 1, 1792. On occasion, Shelby served in the conventions, convened for the purpose of obtaining a separation from the State of Virginia; and he was a member of the convention which formed the first constitution of Kentucky in April, 1792. It is one of the most gratifying incidents in the early history of the West that John Sevier and Isaac Shelby, who together had planned the Battle of King's Mountain and so largely contributed by their personal efforts to the achievement of that decisive and pivotal victory of the Revolution, should have been rewarded by the suffrages of their countrymen in the choice of the first chief magistrates, respectively, of Tennessee and Kentucky. Shelby was unanimously chosen as first governor of Kentucky by the board of election in May, 1792. For some days, he hesitated to accept an office of such high responsibility—one, as he himself modestly observed, which he conceived his walk through life had not qualified him to fill with real advantage to his country. However, regarding with veneration and respect the call of his fellow citizens, he consented, after mature reflection, to accept. In passing through Danville, where ten preliminary conventions were held for separation from Vir-

ginia, on his way to Lexington, first capital after admission to Union, he was presented by the inhabitants with an address in which the following words occur: "Unacquainted as to flattery or studied panegyrics, they only wish in the plain language of truth to express the great satisfaction they feel on the appointment, and of your acceptance of the office." Upon his arrival in Lexington, on June 4, he was likewise presented with an address, containing the following expressions: "Truly sensible, that no other motive than a sincere desire to promote the happiness and welfare of your country, could have induced you to accept an appointment, that must draw you from those scenes of domestic ease and private tranquility, which you enjoy in so eminent a degree; . . . (and) having the fullest confidence in your wisdom, virtue and integrity, we rest satisfied, that under your administration the Constitution will be kept inviolate, and the laws so calculated as to promote happiness and good order in the State."

On June 6, the governor-elect repaired to the hall of the senate chamber, then in a log cabin, and delivered an address to the two houses assembled there—thus imitating the procedure of his illustrious contemporary model, George Washington—a procedure recently brought back into use by President Wilson. In his address, Governor Shelby urged the establishment of public and private credit on the most solid basis; the speedy settlement of land disputes; the regulation of future elections, in such manner as to guard against undue influence; the appointment of two senators; and the passage of a law to compel sheriffs and other public officers to give security for the due performance of their duties. In general, he urged upon all to make paramount the effort to secure the "prosperity of our common country." In particular, remarks were addressed to the House of Representatives, recommending the raising of an adequate revenue for public exigencies and the appointment of commissions to fix on a place for the permanent seat of government. In the answer to the governor's address occurs the following interesting observation:—"It affords us pleasure that the voice of our country has called

to the office of chief magistrate one who from an early period, has experienced inconveniences and dangers we have in common been subject to, by our far removal from the assistance of government and our adjacent situation to hostile savages."

This passage calls forcible attention to the condition of Kentucky as a frontier state. For years, like Tennessee, it had remained in an isolated situation, exposed to the sporadic attacks of the Indians and very imperfectly protected by armed force. It is true that for a decade the average annual immigration into Kentucky after 1777 was about 2,700 a year, and from 1786 to 1790, 12,000 a year. And this, in spite of the fact that the routes to Kentucky were persistently haunted by the savage men, who frequently fell upon travellers coming over the wilderness road and voyagers by the water routes, in particular the Ohio. The figures given by Judge Innis in 1790 are appalling: that the Indians alone had killed 1,500 persons during his seven years of residence in Kentucky.

This sense of isolation and the belief that they were neglected by Washington were among the underlying causes of disaffection to the general government on the part of the people of Kentucky. The people in the east labored under the delusion that, in the difficulties with the Indians on the western frontier, the whites were generally the aggressors. Moreover, the British government, in flagrant disregard of the provisions of the treaty of peace, had failed to remove her troops from the northwestern posts. Whereas the general government had assumed the defence of the borders, the real meaning of the change proved disastrous to the people of the West, since the Federal troops stationed at the western frontier posts were entirely inadequate in numbers to cope with the situation, which involved the defence of a long and exposed frontier. Harman's expedition against the Indians in 1790 was marred by mismanagement and needlessly severe losses; and the final outcome of the matter, as the result of the protests of the people of Kentucky to the general government, was that a local board of war was appointed in Kentucky, consisting of Scott, Innis, Shelby, Logan and Brown.

General Arthur St. Clair, although his appointment was distasteful to the people of Kentucky, was made commander of the United States Army in the West. Disregarding St. Clair, the Kentuckians in 1791 despatched an expedition against the Indians under Scott and Wilkinson, which so far as it went was completely successful. Nevertheless St. Clair in November of the same year headed an expedition against the Indians which met with disastrous defeat. It was hard upon these events that Shelby took up his duties as chief magistrate; and one of his tasks was to proportion the defense to the immediate danger of the different quarters of the State so as to afford the best protection to the weak settlements.

General Anthony Wayne—the “Mad Anthony” of history—was eventually chosen as commander of the United States Army in the West to succeed St. Clair, who was Governor of the Northwest Territory; but this was only done after failure, both by local authorities and the general government, to negotiate a peace with the Indians. Pending the operations carried out by General Wayne, a new peril appeared upon the horizon which involved the governor and people of Kentucky and afforded the acid test of their allegiance to the general government.

## CHAPTER XII

### ISAAC SHELBY AND THE GENET MISSION

The famous episode in which Edmund Charles Genet, the representative of the new French Republic, played the highly dramatic leading rôle, is certainly one of the most extraordinary in our national annals. In order to understand the significance of the episode and its relation to Isaac Shelby, it is imperatively necessary to understand the popular temper in the country at that time, and in particular the temper of Kentucky.

In Kentucky, one of the leading features of dissatisfaction with the federal government was the popular conviction that the leading Federalist statesmen of the country were lukewarm in advocacy of the demand for the opening of the Mississippi to Western commerce. Ever since the excitement aroused by Jay's reputed proposal to cede to Spain for twenty-five years the navigation of the Mississippi River in return for commercial advantages to be enjoyed by the Eastern States alone, the temper of the Kentucky people had tended toward opposition to the Spaniards who held Louisiana and resolutely denied to the United States the free navigation of the Mississippi. The hostility towards the Spaniards was aggravated by the fact that they were allied in the war against France with England, which still retained the Northwest posts in defiance of her treaty obligations. The inevitable result was to arouse the sentiment of the people of Kentucky in behalf of France against the alliance of England and Spain which, in fact, effectively closed the Mississippi to the commerce of the West. Moreover, many Americans throughout the country—for the sentiment was by no means confined to Kentucky alone—felt most warmly towards France, the ally of America in the Revolution.

This sentiment found free vent in the United States through the instrumentality of the "Democratic Clubs," emanating in especial from the Democratic Society of Philadel-

phia, established early in 1793. As early as August of the same year, one of these clubs was organized in Lexington, Kentucky; and soon similar organizations sprang up, in Georgetown, Paris, and other Kentucky towns. Through the instrumentality of these societies, sentiment was rapidly being developed and organized. When Genet landed at Charleston on April 8, 1793, he inaugurated a most vigorous and sensational campaign of propaganda on behalf of the new French Republic. His meddlesome activities in the way of actually fitting out ships for the service of France against England, were effectually stopped by Washington's Proclamation of Neutrality (April 22, 1793). Blocked in this direction, he now turned his attention to the task of enlisting the sentiment of the entire country on the side of France. Receiving what he chose to regard as tacit encouragement from Jefferson, an ardent democrat and lover of France, Genet deliberately proceeded, by appealing direct to the people of the United States, to invoke the armed assistance of American citizens against the Spanish possessions in the Southwest. By recruiting an army against the Spaniards at New Orleans, Genet hoped to embroil the United States in a war with Spain and eventually with Spain's ally, England.

The effect of Genet's machinations, carried on at first through his agent, Michaux, soon exhibited itself in Kentucky. Many prominent citizens, feeling embittered against Spain for the closure of the Mississippi, welcomed the opportunity to express themselves in no uncertain terms; and in October, 1793, the Democratic Society of Lexington went on record in a violent resolution:—"That the right of the people on the waters of the Mississippi, to the navigation, was *undoubted*; and . . . ought to be *peremptorily* demanded of Spain, by the government of the United States." A printed address, giving evidence of a plot being hatched in Philadelphia to enlist a force in Kentucky against the Spanish dominions on the Mississippi had come into the possession of the Commissioners of Spain as early as the summer of 1793; and following their complaint to the President, George Washington, Thomas Jef-



ferson, Secretary of State, transmitted the address to Governor Shelby, in a letter (August 29, 1793), in which he says that the President desires "if you shall have reason to believe any such enterprise meditated, that you put them on their guard against the consequence, as all acts of hostility committed by them on nations at peace with the United States are forbidden by the laws and will expose them to punishment: And that in every event, you take those legal measures which shall be necessary to prevent any such enterprize." In his reply (October 5, 1793), Shelby says: "I think it my duty to take this early opportunity to assure you that I shall be particularly attentive to prevent any attempts of that nature from this country. I am well persuaded, at present, none such is in contemplation in this place. The citizens of Kentucky possess too just a sense of the obligations they owe the general government, to embark in any enterprize that would be so injurious to the United States."

At the time of writing this letter, Governor Shelby was confident that no such enterprise was in contemplation in Kentucky; but he was soon to be undeceived. On November 6 Jefferson again writes to Shelby, informing him that the four agents of France are Lachaise, Depeau, Mathurin and Gignoux; and urging him: first, to restrain the conspirators by law, if possible; but in case legal statutes should prove inadequate to meet the situation, to suppress the expedition by the militia of the States, as had been ordered and practiced in the other States. In the same enclosure (of date November 9, 1793), the Secretary of War addressed a letter to Governor Shelby in which he points out that the expedition in contemplation, if permitted to proceed, would constitute a breach of neutrality, and consequently involve us in war with Spain; and explicitly says: "The secretary of state has suggested how this design may be prevented by the usual course of the laws—but if this mode should be ineffectual, I am authorized by the president of the United States, to request that your excellency will use effectual military force to prevent the execution of the plan of the said Frenchmen, or any other persons who may

support, or abet their design. For the lawful expenses of which the United States will be held responsible."

At about this same time (November 7, 1793) Arthur St. Clair, Governor of the Northwest Territory, writes Governor Shelby—informing him that George Rogers Clark had received a commission, from the government of France, and was about to raise a body of men in Kentucky to attack the Spanish settlements upon the Mississippi. He also informs Shelby of a report, which has reached him, that "a large sum of money, a paymaster, and a number of French officers, are arrived at the falls of Ohio; and a number of boats for the expedition laid down." At the same time, St. Clair issued a proclamation warning the public of the designs of Lachaise, Depeau, Mathurin and Gignoux, and forbidding the citizens of the Northwest Territory to aid, abet or join them, in any attempt they may meditate against the Spanish settlements on the Mississippi.

At the time of convening the legislature of Kentucky on November 6, Governor Shelby had not received the three letters above mentioned; as he expressly states, he did not receive the letters from the Secretary of State and the Secretary of War until late in December. Nor had he then any important or tangible evidence that there was a serious movement on foot in Kentucky of the kind described. Moreover, he had no information of any detailed sort as to any efforts being made by the general government in behalf of Kentucky beyond the vague and indefinite statement of Jefferson in his letter of August 29, 1793: "In addition to considerations respecting the peace of the general union, the special interests of the State of Kentucky would be particularly committed, as nothing could be more inauspicious to them than such a movement, at the very moment when those interests are under negotiation between Spain and the United States." That Governor Shelby did not, later in the session, make a special address to the legislature on the subjects is entirely comprehensible, in view of the above facts. And in view of the lack of precise and detailed information, such an address

would have been, it seems, ill-advised and alarmist in character. While appealing to the passions of the people, by giving credence to the sensational stories which at this time lacked proper authentication, such an address or a proclamation would have been powerless to allay the popular hostility to Spain and disaffection to the general government by the vague cryptic allusion of Jefferson to a "negotiation" then in progress between the United States and Spain.

Meantime, the agents of Genet had reached Kentucky, and immediately proceeded to sound Governor Shelby in regard to their extraordinary and unneutral project. Writing from Knob Lick, November 25, 1793, and addressing Shelby as "Citizen Governor," Lachaise expresses his regret at being unable to deliver to the Governor in person "letters which I was intrusted with by the minister," and ventures the hope that he may see him at his (Shelby's) home, should he pay a visit there in the near future. Writing from the same place, on the same date, Charles Depeau informs the "Citizen Governor" that he has been despatched in company with more Frenchmen to join the expedition of the Mississippi, and continues as follows: "As I am to procure the provisions, I am happy to communicate to you, whatever you shall think worthy of my motive, or in which your advice may be of use to me, as I hope I have in no way disoblged you; if I have, I will most willingly ask your pardon. For nobody can be more than I am willing for your prosperity and happiness. As some strange reports has reached my ears that your excellence has positive orders to arrest all citizens inclining to our assistance, and as my remembrance know by your conduct, in justice you will satisfy me in this uncommon request." From these two letters, it seems to be clear that these Frenchmen had been led to believe, perhaps by Senator Brown, of Philadelphia, that Governor Shelby, as an individual, was hostile to the Spaniards and favorable to the French. The purport of these presumptuous letters is obviously to take the measure of the governor and learn from him the exact nature of his official disposition toward the proposed undertaking. In reply to this

second letter, Governor Shelby wrote from Frankfort, November 28, stating the substance of the instructions he had received from the Secretary of State, and adding only these words: "To which charge I must pay that attention which my present situation obliges me." The phrase, "my present situation," gives a somewhat dubious meaning to the governor's statement; but one familiar with his style of expressing himself, and with the formal phraseology of the day, recognizes the statement merely to mean: that whatever his personal feelings towards France as a nation might be, he would in his official capacity as Governor of Kentucky see that the laws of the country were enforced. It is highly probable that, at this time, Governor Shelby had not informed himself as to laws then on the statute books in Kentucky covering the case in question. Nor does it appear that he had resolved to invoke the military power of the State should no legal remedy be available.

On December 2, following the issuance of his proclamation of November 7, already referred to, Governor St. Clair received a letter from the Secretary of War "announcing the design of certain Frenchmen, to engage in some military expedition against the possessions of Spain on the Mississippi—to set out from Kentucky." One week later he wrote to General Wayne informing him of the receipt of this letter and of the fact that he had informed Governor Shelby of it—"in order that he might take such measures to prevent it, as he judged proper." On January 6, acting upon this advice, General Wayne wrote to Governor Shelby, placing at his disposal the squadron of horse, stationed between Georgetown and Lexington and under the command of Major W. Winston, for use in suppressing the French expedition.

It is difficult to arrive at an exact estimate, at so remote a date, of the complexion of men's minds in a given circumstance and the precise motives which prompt to decisive action. There is no reason to doubt that many of the leaders of Kentucky, including Shelby, as evidenced by his letter of January 13, 1794, printed below, felt very violently against

Spain and very warmly towards France. To these irascible and hot-blooded patriots dwelling upon the Western waters, that country which kept closed to their produce and free traffic the great highway of the Mississippi River was nothing less than an enemy country. While the membership of the Democratic clubs and societies in Kentucky are perhaps not fully known, certain it is that many prominent men, among which were included a number of Shelby's friends, were members of these organizations. It soon became plain to Shelby that the temper of the people at this time was very inflammable; and he preferred to adopt a Fabian policy of "watchful waiting," rather than to adopt an aggressive policy of military suppression.

With reference to the situation which had developed by an early date in January, 1794, Shelby himself says: "The subject now became serious and interesting, and required the most attentive consideration; for although I felt no apprehensions that the intended expedition could be carried into effect, yet I entertained too high a sense of the obligations due to the General Government, to refuse the exercise of any powers with which I was clearly invested. After the most careful examination of the subject, I was doubtful whether under the constitution and laws of my country, I possessed powers so extensive as those which I was called upon to exercise." Doubtless Governor Shelby referred the investigation as to the legal status of the case to his Secretary of State, James Brown, who was a member of the Democratic Society of Lexington; but the dates of the letters exchanged between the two, which have been preserved, indicates that Brown concurred with the views of the Governor, rather than that Shelby accepted the legal advice of his secretary.

Below is Governor Shelby's famous letter of January 13, 1794, to the Secretary of State of the United States:

"SIR: After the date of my last letter to you, I received information that a commission had been sent to General Clark, with power to name, and commission other officers, and to raise a body of men: no steps having been taken by him (as

far as has come to my knowledge) to carry this plan into execution I did not conceive, that it was either proper or necessary, for me to do anything in the business.

"Two Frenchmen, Lachaise, and Depeau, have lately come into this State. I am told they declare publicly, they are in daily expectation of receiving a supply of money, and that as soon as they do receive it, they shall raise a body of men, and proceed with them down the river.

"Whether they have any sufficient reason to expect to get such a supply, or any serious intention of applying it in that way, if they do receive it, I can form no opinion.

"I judge it proper, as the president had directed you to write to me on this subject, to give you this information, that he may be apprised as fully as I am of the steps which have been, and are now taking here, in this matter. If the president should hereafter think it necessary to hold any further communication with the executive of this state on this subject, I wish him to be full, and explicit as to the part which he wishes and expects me to act. That if what is required of me should in my opinion be within my constitutional powers, and in the line of my duty, I may hereafter have it in my power to show that the steps which I may take were not only within my legal powers, but were also required by him.

"I have great doubts, even if they (General Clark, and the Frenchmen) attempt to carry this plan into execution, (provided they manage their business with prudence) whether there is any legal authority to restrain or to punish them; at least before they have actually accomplished it. For if it is lawful for any one citizen of this state to leave it, it is equally so for any number of them to do it. It is also lawful for them to carry with them any quantity of provisions, arms, and ammunition. And if the act is lawful in itself, there is nothing but the particular intention with which it is done, that can possibly make it unlawful—but I know of no law which inflicts punishment on intention only—or any criterion by which to decide what would be sufficient evidence of that intention: (even) if it was a proper subject of legal censure.

"I shall upon all occasions be averse to the exercise of any power which I do not consider myself as being clearly and explicitly invested with; much less would I assume power, to exercise it against men, who I consider as friends, and brethren, in favour of a man, whom I view as an enemy, and a tyrant.

"I shall also feel but little inclination to take an active part in punishing or restraining my fellow citizens for a supposed intention only—to gratify or remove the fears of the minister of a prince who openly withholds from us an invaluable right; and who secretly instigates against us a most savage and cruel enemy.

"But whatever may be my private opinion, as a man, as a friend to liberty, an American citizen, and an inhabitant of the western waters—I shall at all times hold it as my duty, to perform whatever may be constitutionally required of me as governor of Kentucky, by the president of the United States."

There can be no sort of doubt that this was a most extraordinary letter for the governor of a state to address to the Secretary of State of the United States. Moreover, it stands out in sharp contrast to Shelby's former letter (October 5, 1793) to the Secretary of State. In a letter to General M. D. Hardin (July 1, 1812), Governor Shelby gives this explanation: "There is to be sure some inconsistency in my two letters to the Secretary of State of the United States, and I saw it at the time, but at the date of the last, I saw evidently that the whole scheme of Lachaise would fall to the ground without any interference, and that the present was a favourable one, while the apprehensions of the President were greatly excited, to express to him what I knew to be the general sentiments of the Kentucky people, relative to the navigation of the Mississippi and the Spanish Government. . . ." Governor Shelby has clearly fallen into error, after the lapse of years, in his declaration that on January 15, 1794, he was assured of the failure of the Franco-American expedition against Louisiana. At this very time, General George Rogers Clark was

circulating his "Proposals for raising volunteers &c." for this expedition throughout Kentucky; and so favorably were these "Proposals" received that they were set forth, in full, in the *Centinel* of the Northwest Territory—Cincinnati, January 25, 1794, and copied in the *Kentucky Gazette* of February 8, 1794. They appear as follows:

GEORGE R. CLARK, *Esq.*

Major General in the armies of France, and Commander in Chief of the French Revolutionary Legions on the Mississippi River.

#### PROPOSALS

For raising the volunteers for the reduction of the Spanish posts on the Mississippi, for opening the trade of the said river, & giving freedom to its inhabitants, &c.

All persons serving the expedition to be entitled to one thousand acres of Land—those that engage for one year, will be entitled to two thousand acres—if they serve two years or during the present war with France, they will have three thousand acres of any unappropriated Land that may be conquered. The officers in proportion pay &c as other French troops. All lawful Plunder to be equally divided agreeable to the custom of War. All necessaries will be provided for the enterprize, and every precaution taken to cause the return of those who wish to quit the service, as comfortable as possible, and a reasonable number of days allowed them to return, at the expiration of which time their pay will cease. All persons will be commissioned agreeable to the number of men they bring into the field. Those that serve the expedition will have their choice of receiving their lands or one dollar per day.

G. R. CLARK.

It was not until February 10 that Governor Shelby replied to the letter of General Anthony Wayne of January 6, preceding. In it he says: "I can assure you that, there is not the smallest probability that such an enterprize will be attempted; if it should, the Militia of this State, I am fully persuaded, are able and willing to suppress every attempt that can be made here to violate the laws of the Union." It is difficult to understand, today, though it may be true, how Governor



Shelby could have had access to sources of information so positive to the effect that the French enterprise would not even be attempted. On the contrary, it appears certain that it was a matter of general, and even public, knowledge that preparations for the enterprise were well under way; and the projectors of the enterprise were so emboldened by the favorable sentiment in Kentucky that Lachaise and Depeau had the temerity to address the governor on the subject, and General Clark openly sent forth his proposals of volunteers, which doubtless were read by Governor Shelby two days before he wrote his reply to the letter of General Wayne. There is something equivocal, also, in his assurance; for he had already expressed his doubts as to the existence of law on the statute books under which the courts could arrest the projected enterprise.

The actual fact would seem to be that Governor Shelby deliberately declined every invitation or proposal made to him by the General Government, either directly or through St. Clair and Wayne, to act upon his own unsupported authority as governor of Kentucky—either by invoking legal aid or military force. He delivered his ultimatum to the president of the United States, which practically amounted to this: I can find no law which empowers me to stop this expedition. If you wish it stopped legally, pass a national law that will cover the case. Moreover, I decline to call out the State militia to suppress an enterprise which may never materialize into action; for premature or ill-advised action will agitate and inflame public sentiment in this State. If you want me to suppress the enterprise by force, command me to do so under the constitution and I will carry out such constitutional command. But I warn you now of this significant circumstance: the people on the western waters are aroused against Spain and are uncompromising in their demands for such negotiations with Spain as will lead to the opening of the Mississippi River.

Let us see, now, what was the actual result of Shelby's recalcitrant and somewhat defiant attitude in this whole mat-

ter. Several important consequences flowed from his letter of January 13, 1794. In the first place, an "act in addition to the act for the punishment of certain crimes against the United States" was brought before Congress "declaring, that to embark in an enterprize, such as was contemplated by the citizens of this State, should be considered as criminal, and directing what punishment should be inflicted on those who should be guilty of such an offence." In answer to Shelby's letter (January 13, 1794), Edmund Randolph wrote Shelby an extended letter (March 29, 1794), in the first part of which he attempts to show, without by any means complete success, that Governor Shelby "might with propriety comply with the instructions of the General Government"; and in his message to the House of Representatives of Kentucky (November 15, 1794) Shelby says: "From the necessity of passing that law (above referred to), I infer that my doubts as to criminality of the proposed enterprise were well founded, and that until the passage of that law (June 5, 1794), the offence had not been declared nor the punishment defined."

It is clear that the President, from Shelby's letter of January 13, 1794, feared that in his official capacity as Governor of Kentucky he was not disposed to take drastic action, either legal or military, in suppressing the projected expedition. Accordingly, taking the matter into his own hands, he issued a proclamation (March 24, 1794), declaring: "Whereas I have received information that certain persons in violation of the laws, have presumed, under color of a foreign authority, to enlist citizens of the United States and others within the State of Kentucky, and have there assembled an armed force for the purpose of invading and plundering the territory of a nation at peace with the said United States. . . . I have therefore thought proper to issue this proclamation, hereby solemnly warning every person not authorized by the laws, against enlisting any citizen or citizens of the United States, or levying troops or assembling any persons within the United States for the purpose aforesaid, or proceeding in any manner to the execution thereof, as they will answer the same

at their peril." Washington took the additional step of directing General Wayne to "establish a strong military post at Fort Massac on the Ohio, and prevent by force, if necessary, the descent of any hostile party down that river."

The recall of Genet, which had been effected through diplomatic channels, together with Washington's prompt and decisive manner cited above, dealt the final blow to the hopes of Clark, Lachaise, and their adherents. The gravity of the situation, and the danger which had been averted, are exhibited in a letter of Lachaise to the Democratic Society of Lexington (May, 1794), in which he says "that causes unforeseen had put a stop to the march of two thousand brave Kentuckians, who were about to go and put an end to the Spanish despotism on the Mississippi, where Frenchmen and Kentuckians, united under the banners of France, might have made one nation, the happiest in the world—so perfect was their sympathy."

## CHAPTER XIII

### THE NAVIGATION OF THE MISSISSIPPI

In an "Address to the Freemen of Kentucky," issued in the summer of 1812, during his campaign for the governorship, Governor Shelby declared that he wrote his letter of January 13, 1794, having in view as one principal object to alarm the General Government regarding the Western people and their excited state concerning the question of the navigation of the Mississippi. "The attention of the General Government being thus drawn to the Western country, I deemed it a favorable time to make an impression on their minds of the importance of the navigation of the Mississippi, and of the necessity of attending to that subject. *On that account and with that object*, my letter of the 13th January, 1794, was calculated rather to increase than to diminish the apprehensions of the General Government as to the Western country. This letter had the effect desired, it drew from the Secretary of State information in relation to the navigation of the Mississippi, and satisfied us that the General Government was, in good faith, pursuing this object of first importance to the people of Kentucky. The information thus drawn forth quieted the public mind and restored harmony to the country."

A more explicit setting forth of the negotiations is necessary here to a full understanding of this most important subject. In his letter to Shelby of March 29, 1794, Edmund Randolph says: "In December, 1791, it was verbally communicated to the Secretary of State by one of the Commissioners of Spain here, that his Catholic Majesty, apprised of our solicitude to have some arrangements made respecting our free navigation of the Mississippi, and the use of a port thereon, was ready to enter into a treaty at Madrid. . . . Instructions, comprehensive, accurate and forcible were prepared by my predecessor; and if at this stage of the business, it were proper to develop them to public view, I should expect with certainty, that those who are the most ardent for the main object would

pronounce that the executive has been deficient neither in vigilance nor exertions."

The pressure of public sentiment, aroused by the pronunciamentos of the Lexington Democratic Society, at length took form in the following action by the General Assembly of Kentucky (December 20, 1794):—"Resolved, that the senators in Congress be and they are hereby instructed to require information of the steps which have been taken to obtain the navigation of the river Mississippi and to transmit such information to the executive of this State." On November 24, preceding, Thomas Pinckney had been commissioned by the Federal Government as envoy to Madrid, with instructions to negotiate a treaty securing the free navigation of the Mississippi. And further to allay the excitement in Kentucky, the Senate of the United States passed a resolution providing:

"That the President of the United States be, and he hereby is, requested to cause to be communicated to the executive of the State of Kentucky, such part of the existing negotiation between the United States and Spain, relative to this subject, as he may deem advisable and consistent with the course of negotiations."

In pursuance of this resolution, the President appointed James Innes "a Special Commissioner to detail a faithful history of the negotiations pending between the United States and the Court of Madrid respecting the navigation of the Mississippi." The exhaustive analysis made by the Special Commissioner and transmitted to Governor Shelby, was published with accompanying documents in the *Kentucky Gazette*, March 14, 1795. The crux of the matter is contained in his statement that the President had decided not to "enter into any commercial relations with the Court of Madrid 'until our right to the free use of the Mississippi shall be most unequivocally acknowledged and established, on principles never hereafter to be drawn into contestation.'"

The subsequent incidents in this matter, the further Spanish intrigues engineered by Carondelet, the diplomatic negotiations of Pinckney, can find no place here. Suffice it to say

that on March 30, 1798, the Spanish troops evacuated the posts north of the boundary, the thirty-first meridian, established by the treaty; and at last "the pioneers of the West found themselves in the possession of the long coveted right of freely navigating the great river, which formed their only highway to the markets of the world."

Isaac Shelby has been the target for severe criticism and bitter invective because of his stand in the matter of the French expedition and his apparent readiness to allow American neutrality to be violated and America compromised. But when we consider that the ultimate result of his famous letter of January 13, 1794 and of his subsequent acts was the opening to navigation of the Mississippi, we cannot but feel that this splendid achievement far outweighs the fault of alleged luke-warmness in devotion to the national government in the matter of ordering the arrest of General Clark, La-chaise, Depeau, and the other leaders in the expedition.

It was during Governor Shelby's term as first governor of Kentucky that General Wayne conducted his effective campaign against the Indians, culminating in the battle of Fallen Timbers and the treaty (August 3, 1795), by which the Northwestern tribes surrendered all claims south of the Ohio River. In his autobiographical account, Shelby says in speaking of the time when he assumed the office of governor: "The country was then in a state of war, without funds of any description, every part of Kentucky was a frontier infested with a savage foe and the means of defense allowed by the government very weak and feeble, but from a perfect knowledge of the most exposed points of the frontier, Governor Shelby was so enabled to proportion the defense to the immediate danger of the different quarters of the State as to afford the best protection to the weak settlement which his limited means could possibly enable him to do, and prevented any considerable depredations from the barbarous foe which had before so greatly annoyed the country." With the final evacuation in May, 1796, of the British posts in the Northwest, the cancerous source of strife between the Indians and

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